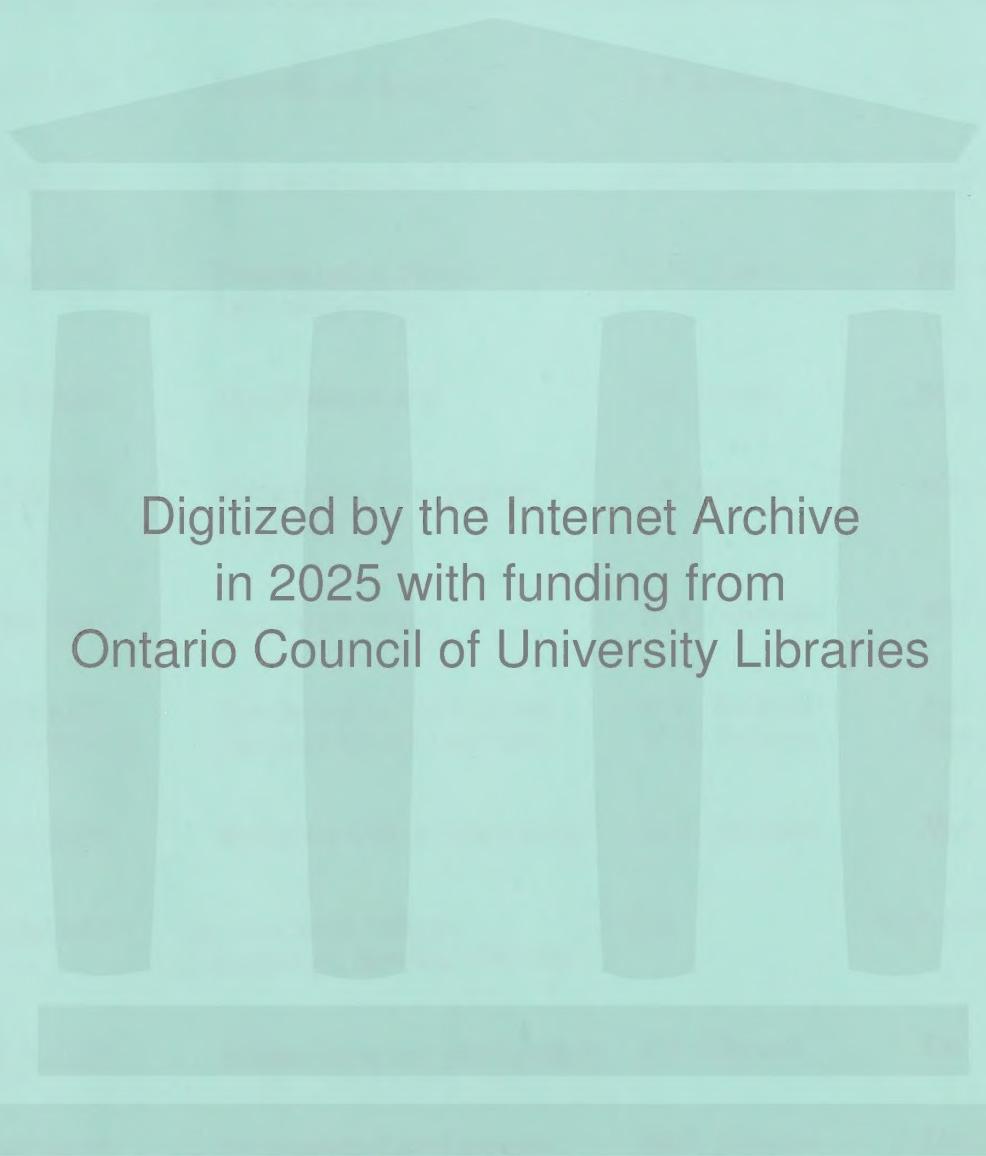


**ONTARIO PUBLIC SERVICE
LABOUR RELATIONS TRIBUNAL
DECISIONS**



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ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL

INTEREST ARBITRATION DECISIONS VOLUME 3

1985 - 1987

File No.	Re:	Chairman	Date
T/0001/86	Correctional Services	P.J. Brunner	Apr. 27/87
T/0002/86	Liquor Boards	M.G. Picher	June 30/87
T/0006/86	Technologists Medical Laboratory Series	D.H. Kates	Dec. 6/89
T/0014/86	Law Enforcement	J.H. Devlin	Mar. 30/87
T/0036/86	Technicians Photographic Class Series	J.E. Emrich	May 2/89
T/0018/87	Law Enforcement	M.K. Saltman	May 11/88
T/0039/87	Psychometrist Class Series	M.K. Saltman	Apr. 11/89
T/0039/87-2	Psychometrist Class Series	M.K. Saltman	Mar. 2/90
T/0050/87	Probation Officer Class Series	M.K. Saltman	Mar. 13/89
T/0059/87	Environmental Officers (Management Board of Cabinet)	J. Ord	Sept. 5/90
T/0063/87	Maintenance Services Category	J.T. Clement	Dec. 19/88
T/0104/87	Institutional Care Category	M.K. Saltman	Dec. 28/88

7/01/86

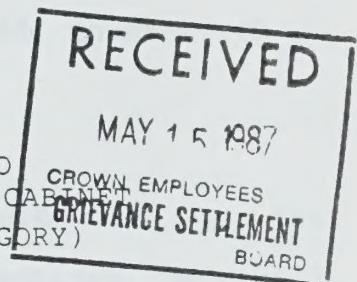
IN THE MATTER OF The Crown Employees' Collective Bargaining Act, R.S.O. 1980, Chapter 108, as amended;

AND IN THE MATTER OF AN ARBITRATION

HEARINGS HELD AT TORONTO, ONTARIO,
ON OCTOBER 27TH and DECEMBER 9TH, 1986

B E T W E E N :

THE CROWN IN RIGHT OF ONTARIO
REPRESENTED BY MANAGEMENT BOARD OF CABINET
(CORRECTIONAL SERVICES WAGE CATEGORY)



(Employer)

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

(Union)

BOARD OF ARBITRATION

P. JOHN BRUNNER

CHAIRMAN

GEORGE MILLEY

EMPLOYER NOMINEE

GUY BEAULIEU

UNION NOMINEE

A P P E A R A N C E S

FOR THE EMPLOYER

W. J. GORCHINSKY
E. MOOLGAOKAR
and others

FOR THE UNION

ANDRE BEKERMAN
JIM ONYSCHUK
and others

A W A R D

This is an arbitration pursuant to Section 10 of the Crown Employees' Collective Bargaining Act, R.S.O. 1980, Chapter 108 as amended (hereinafter referred to as the Act).

The Crown in Right of Ontario as represented by the Management Board of Cabinet (Ministry of Correctional Services) (Correctional Services Category) (hereinafter referred to as the Employer) and the Ontario Public Service Employees Union (hereinafter referred to as the Union) were parties to a collective agreement which expired on December 31, 1985.

On September 3, 1985 the Union, pursuant to subsection 22(1) of the Act gave formal notice to bargain to the Employer with a view to the renewal of the collective agreement.

A collective agreement not having been realized, the matters in dispute that come within the scope of collective bargaining under the Act were referred to this Board of Arbitration.

The duty of this Board as prescribed by Section 12 of the Act is to examine into and decide on matters that are in dispute within the scope of collective bargaining and in the conduct of its proceedings and in rendering its decision the Board is

directed by subsection 12(2) to consider any factors that to it appears to be relevant to the matters in dispute including the subject areas addressed by paragraphs (a) to (d).

Hearings were held by this Board on October 27 and December 9, 1986. Each party submitted written briefs as to their respective positions on the issues in dispute. Evidence was also adduced with respect to the similarities and differences between the Correction Officer (Ontario) and the Custodial Officer (Canada) classifications.

Filed with us as well were the awards of several Boards of Arbitration which have wrestled with similar issues as between these parties and in particular those chaired by Prof. Arthur Kruger (1982), David Kates (1984) and Martin Teplitsky (1985).

The following are the matters that are still in dispute within the scope of collective bargaining under the Act.

1. Term of operation of the collective agreement.
2. Salaries.
3. Retroactivity of salary increases.
4. Implementation.
5. Overlap or cross-over in salary rates between different classifications.

Before addressing these topics we wish to make a comment with respect to the Union's submission that the salaries of Correctional Officers should be substantially the same as those paid to Constables in the Ontario Provincial Police. This is a subject that has been in issue between these parties for several years and was most recently dealt with by the Board of Arbitration chaired by M. Teplitsky in its award dated November 27, 1985. At page 3 of that award, a unanimous Board made the following comments:

"Having studied the briefs and having heard the evidence of the witnesses, I am satisfied that correctional officers are not comparable to O.P.P. Officers in terms of the nature of the principal duties performed by each group. Although both groups work in the administration of justice in the province, the principal functions of the O.P.P. constable are to prevent crime and to apprehend criminals. On the other hand, the principal functions of correctional officers are to prevent prisoners from escaping, to direct their activities within the confinement and to aid in their reformation. The skills required for each set of duties are quite different. These groups are not comparable so as to invoke the "equal pay for equal work principal". Indeed, Mr. Yule, who testified on behalf of the Union and who had performed a C.W.S. study on both groups placed the correctional officers some five steps below the O.P.P. Officers. I will return to his evidence later in this award. I recognize that comparability in interest arbitration is also used to describe a situation where, although the duties of the two groups are different, it has been determined that the value of their work is approximately the same. Firefighters and police constables in Ontario offer an example. I note that the political, judicial and arbitral support the correctional officers have received has

asserted a need to narrow the gap between their salaries and those paid to O.P.P. Officers. There has been no suggestion that the work of the correctional officer is equal or approximately equal in value to that of the O.P.P."

Having considered the matter once more in light of the briefs that were presented by both parties, we have nevertheless reached the conclusion that the opinion expressed by the Teplitsky Board was correct and should not be departed from.

That Board also stated that there should be "approximate parity" as between Correctional Officers (Ontario) and Custodial Officers (Canada).

The Union, although not disputing that the comparison was useful, submitted that the Teplitsky Board had in fact not done what it said it had intended to do because it failed to take into consideration the complexities of the Custodial Officer classification system with its greater range of salary rates for similar job functions. In the view of the Union, what the Teplitsky Board in fact did was to award something that was substantially less than "approximate parity".

Accordingly evidence was called by the Union as to the Custodial Officer classifications so as to explain the different

job functions and to put the various job descriptions in their proper context. The Employer also led evidence on these matters through a witness who was quite knowledgeable with the federal system. As a result we had the benefit of a very thorough comparison between the various job classifications at both the provincial and federal levels which has been of great assistance to us. In our view it would not be useful to enter into the arena of controversy between the parties as to whether the Teplitsky Board did or did not reach "approximate parity" as between Correctional Officers and Custodial Officers. In this respect we would only say this. Similarities and differences do exist between the two systems but we nevertheless are of the view that Custodial Officers do have "similar occupations" to that of Correctional Officers and accordingly their remuneration is relevant to the questions that are before us.

Having given the matter the best consideration we can our award with respect to the matters in dispute is the following.

1. TERM OF OPERATION OF THE COLLECTIVE AGREEMENT

Two (2) years effective from January 1, 1986 to December 31, 1987.

2. SALARIES

A 5% increase effective January 1, 1986 over and above the salaries paid as of December 31, 1985 in addition to what was awarded by the Teplitsky Board.

A 4.5% increase effective January 1, 1987 over and above the salaries paid as of December 31, 1986.

3. RETROACTIVITY OF SALARY INCREASES

The increases in the salary rates of pay shall be retroactive from their effective dates, on a full 'pro rata' basis, to all employees who are or were in the various job classifications and shall apply to all overtime worked.

4. IMPLEMENTATION

The Employer shall implement all salary rates of pay increases within a period of fifty (50) days from the date of this award.

5. OVERLAP OR CROSS-OVER IN SALARY RATES
BETWEEN DIFFERENT CLASSIFICATIONS

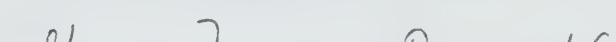
The Board recognizes that there is a problem with respect to certain rates of pay in some job classifications. The Union has suggested a single rate while the Employer proposes the retention of the present salary structure by applying certain increases. We do not propose to disturb the present scheme as in our view this matter would best be resolved by the parties themselves and we propose that a joint management-union committee be established to study this issue during the lifetime of this collective agreement which hopefully will be finally resolved during the next round of collective bargaining negotiations leading towards a renewal of this agreement.

We shall remain seized of and will retain jurisdiction to

deal with all matters in dispute between the parties until a collective agreement has been executed by them.

DATED at Toronto this 27th day of April, 1987.


P. JOHN BRUNNER, CHAIRMAN


George Milley - Dissent Attached
GEORGE MILLEY, EMPLOYER NOMINEE


Guy Beaulieu - Dissent to follow
GUY BEAULIEU, UNION NOMINEE

IN THE MATTER OF AN ARBITRATION
BETWEEN
THE CROWN IN RIGHT OF ONTARIO
(CORRECTIONAL SERVICES WAGE CATEGORY)
and
ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Dissent of George Milley

I have read the chairman's award in the above matter and, with respect, I must express my disapproval. The wage increase, in my view, is both excessive and unjustified.

The Teplitsky award of 1985 said:

"Of considerable significance is the fact that there is a large group of employees in the federal sector, namely, custodial officers, who are directly comparable with Correctional Officers. For all practical purposes they do the same work."

The board said, also, that there should be "approximate parity" as between Correctional Officers (Ontario) and Custodial Officers (Canada).

The current chairman affirms:

"Having considered the matter once more in the light of the briefs that were presented by both parties, we have, nevertheless, reached the conclusion that the opinion expressed by the Teplitsky board was correct and should not be departed from."

The award is for a period of two years from January 1, 1986 to December 31, 1987. To establish parity with the Federal Custodial Officer, the Teplitsky board of November 27, 1985 increased, effective January 1, 1986, the rate of the Ontario Correctional Officer to 14.60 per hour. However, subsequent contract negotiations increased the Federal Custodial Officer rate to 15.20,

thereby creating, in the Correctional Officer's rate, a lag of .60 cents an hour. Thus, on January 1, 1986, the increase required by the Correctional Officer to again reach parity with his Federal Custodial counterpart was .60 cents per hour or, expressed in percentage terms, 4.15 percent.

Notwithstanding this, the present board chairman, effective January 1, 1986, awarded an increase of 5 percent, thereby creating a disparity in favour of the Correctional Officer of .13 cents per hour.

For the year 1987, the Federal Custodial Officer received an increase of 3.25 percent. Therefore, on January 1, 1987, to maintain parity, the Ontario Correctional Officer also required an increase of 3.25 percent. Again, notwithstanding this, the board chairman, effective January 1, 1987, awarded the Correctional Officer an increase of 4.5 percent thereby exceeding significantly the amount required to reach parity with the Federal Custodial Officer and extended further the disparity in favour of the Correctional Officer from .13 cents an hour to .33 cents an hour.

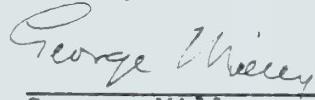
I see no reason for such a significant increase. It is not justified either on the basis of parity, or even approximate parity, with the Federal Custodial Officer.

As the chairman says, the Union claimed that the Teplitsky board did not put the various job descriptions in their proper context and as a result the Corrective Officer received something substantially less than "approximate parity" with the Custodial Officer. However, as the chairman also says, the board

"had the benefit of a very thorough comparison between the various job classifications at both the Provincial and Federal levels."

I find it unusual therefore, that the chairman, notwithstanding his acceptance of the Teplitsky job comparison and having the benefit of a thorough evidentiary comparison by the parties, proffers no explanation for such a significant increase. I think this is unfortunate and, with respect, I suggest that something better was to be expected.

Respectfully submitted,


George Milley
George Milley

April 26, 1987

T/2/86

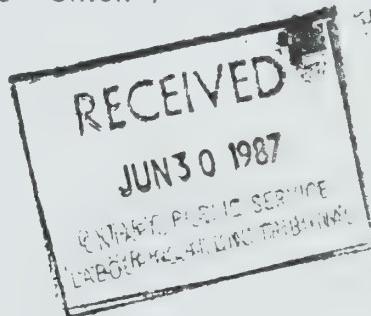
IN THE MATTER OF AN ARBITRATION

BETWEEN: THE LIQUOR CONTROL BOARD OF ONTARIO

- and -

THE LIQUOR LICENCE BOARD OF ONTARIO
(the "Employer")

AND: THE ONTARIO LIQUOR BOARDS EMPLOYEES' UNION
(the "Union")



BOARD OF

ARBITRATION: Michel G. Picher, Chairman
George Milley - Employer Nominee
Sean O'Flynn - Union Nominee

APPEARANCES:

For the Company: R.J. Drmaj, Counsel

For the Union: Martin Levinson, Counsel

Hearings in this matter were held in Toronto on November 17, November 18 and December 8, 1986.

A W A R D

This is an interest arbitration to resolve a number of disputes between the parties concerning the terms of their collective agreement to operate after December 31, 1985. A number of issues, including wages, have been resolved by negotiation between the parties. The principal area of dispute brought before this Board concerns the terms and conditions of employment to govern non-permanent employees.

The Employer is responsible for the marketing and sale of liquor in the Province of Ontario. The Union is the bargaining agent for the 2,900 permanent full-time employees and approximately 1,900 non-permanent employees located in its head office, warehouses and retail stores throughout the province. There are five warehouses and 610 stores, classified as "A", "B", "C" and "D" stores, based upon their sales volume. Managers of "A" and "B" stores, which are the larger units, are excluded from the bargaining unit while those in charge of "C" and "D" stores are included.

Under the prior collective agreement two categories of employees were recognized:

1. Permanent full-time.

2. Part-time store cashiers and temporary employees.

Concern in recent times for the rights and benefits of part-time employees generally has given rise to much negotiation between the parties concerning the lot of part-time employees employed by the Liquor Control Board of Ontario. On October 3, 1986 the Employer and Union executed a memorandum of settlement resolving all issues in dispute respecting the permanent full-time staff, as well as a significant number of terms and conditions of employment for non-permanent employees. The parties also agreed to reorganize the non-permanent employees into two new categories: permanent part-time employees and casual employees. This arbitration is, therefore, entirely concerned with those items in dispute relating to the treatment of these newly established categories.

The Employer estimates, and the Union does not substantially dispute, that some 760 positions in the permanent part-time category will be established. These will encompass the duties of cashier and of store clerk and will cover an overall total of 15,277 hours per week.

The issue of greatest concern to the parties is the method of selection of persons who will be employed in the new permanent part-time category as well as the provisions that will govern their seniority and advancement.

The first area of dispute concerns the recognition clause, article 1 of the collective agreement. The parties have agreed to the recognition of the Union as the exclusive bargaining agent for all permanent employees (full-time and part-time) as well as for casual employees solely for the purposes of matters dealt with in article 32 of the collective agreement. Articles 1.4 and 1.5 deal with zone representatives of the Union, and establish a pool of days which zone representatives and stewards may devote to their official duties without loss of pay. In the Board's view the language of the existing agreement is adequate to ensure the representation of all employees, including the new categories of permanent part-time and casual employees. We agree with the Union, however, that the language of article 1.5 should be specific to protect a permanent part-time employee acting as a representative or steward, but whose time may be calculated in something less than full days. Article 1.5 shall therefore be amended to include the addition of the following sentence at its conclusion:

...If the Zone Representative or Steward is a permanent part-time employee, absences under this provision will be charged against the pool on a pro-rata basis but such absences will be limited to no more than twenty (20) occasions in a calendar year.

It may be noted that the foregoing language is not objected to by the Employer and is also found in its proposal, which differs in other respects.

Under the rubric of the recognition clause the Union also seeks to incorporate language to protect against the encroachment on the work of a

permanent part-time position by the excessive assignment of casual employees. In the Board's view that matter is better addressed, from the standpoint of the logic of the collective agreement, within the framework of article 21, which deals with assignments and job postings, which the Board addresses below.

As noted, much of the disagreement between the parties concerns the accumulation and application of seniority under the newly organized system.

Article 4.1 of the present collective agreement provides as follows:

Unless otherwise specified in this Agreement, an employee's seniority will accumulate upon completion of a probationary period of not less than six (6) months and will be calculated from his first day of work of his most recent appointment to the permanent full-time staff of the Boards.

The foregoing provision does not contemplate a formula for the accumulation of seniority by permanent part-time employees who become full-time permanent employees. At the hearing the parties advised the Board of their agreement on that issue. Article 4.1 shall therefore be renumbered to 4.1(a) and the following article shall be added as 4.1(b):

Notwithstanding Article 4.1(a), where a permanent part-time employee covered by the provisions contained in Articles 34 to _____ of the Collective Agreement becomes a full-time permanent employee, any service as a permanent part-time employee which forms part of his unbroken service

on the permanent staff shall, for the purpose of seniority, be calculated according to the following formula:

Weekly Hours of Work as a Permanent Part- <u>Time Employee</u>	X	Years of Continous Service as a Permanent Part-Time Employee
Full-Time Hours of Work for the Class (Weekly)		

Changes in the employee's weekly hours shall be taken into account.

(Example:

- Weekly hours of work as a permanent part-time employee: 6 years at 20 hours per week, and 2.5 years at 16 hours per week.
- Full-time hours of work for class (weekly) = 40
- Seniority on becoming a permanent full-time employee

$$\frac{20 \times 6 \text{ years}}{40} + \frac{16 \times 2.5 \text{ years}}{40}$$
$$= 3 \text{ years} + 1 \text{ year} = 4 \text{ years})$$

A central concern of the Union is the access to the new permanent part-time positions to be enjoyed by casual employees. The definition of permanent part-time positions and casual positions was established by a prior arbitration board chaired by Professor Kruger. It now appears in an appendix appearing on page 80 of the printed version of the collective agreement. While some dispute existed between the parties prior to the hearing respecting the proposal of the employer to increase the maximum hours that can be worked by a permanent part-time employee, at the hearing the Union indicated its agreement to an amendment of that provision and to allow for a maximum of 40

hours. The Board therefore Orders the amendment of the appendix, substituting the number forty (40) where the number thirty (30) appears within it.

The Union seeks a provision requiring the posting by geographic areas of permanent part-time positions, with such positions to be awarded to employees on the basis of their seniority, if they are qualified. In other words, the senior qualified permanent part-time employee should have access, as of right, to another posted position within the classification of permanent part-time employment, if that position is more desirable to him or her. That will most often be the case where the posted position is for a greater number of hours of work on a regular basis. The Union also requests the establishing of a provision ensuring the awarding of permanent part-time positions to the qualified senior casual employee in the geographic district where a posting takes place.

The Employer asks this Board to establish a clause whereby the Employer is to give consideration to the qualifications and abilities of casual employees to occupy the duties of a vacant permanent part-time position before filling such a position from outside the bargaining unit. Seniority would be a deciding factor only where, in the Board's opinion, two or more casual employees are relatively equal in qualifications. Similarly, in filling vacant permanent full-time positions or vacant permanent part-time positions in a classification with a higher maximum salary rate, the Employer would give consideration to the qualifications and abilities of its permanent part-time

employees before going outside the bargaining unit, with seniority to govern in the event that, in the Employer's opinion, two or more permanent part-time employees are relatively equal in qualifications and abilities.

The competing positions of the parties on this issue reassert the long standing tension between seniority, on the one hand, and qualifications as judged by the Employer, on the other hand, as operative criteria in filling vacancies. The Employer seeks to ensure the advancement of its most capable and promising employees. The Union, on the other hand, seeks to ensure that employees of long service will be guaranteed the ability to improve their employment standing provided only that they are qualified to perform the work in question.

Article 21 of the present collective agreement provides for a system of promotion among regular full-time employees consistent with the principles espoused by the Union. Vacancies are posted within the bargaining unit and the senior qualified applicant becomes entit'ed to the position. As a general matter we are persuaded that a similar provision should be the dominant standard for the promotion of casual employees to permanent part-time positions, for promotion within the ranks of permanent part-time employees, and for the promotion of permanent part-time employees into regular full-time positions. On the other hand, we are not unaware of the importance to the employer of some latitude to identify and advance the most promising individuals from within the pool of casual and part-time employees, which is its primary source of manpower recruitment.

In the Board's view it is significant that the work performed by the employees in the bargaining unit is generally unskilled and that the jobs within the segments of the bargaining unit are relatively uniform and similar. Moreover, warehouse, office and store employees are restricted to bidding on vacancies within their own seniority stream. In these circumstances opportunities for advancement should not be unduly limited by a promotion provision that is in effect a competition clause that could frustrate the progress of qualified employees. However, we do not see why this issue must necessarily be resolved on an "all or nothing" basis. Some latitude should be preserved for the Employer to implement a fixed number of special merit promotions so that a limited group of extraordinarily able employees can be encouraged to advance within the Employer's system. In a workplace where the jobs are unskilled and standards of qualification are not complex, a proviso for a limited number of special merit promotions reduces the risk of discouraging the continued employment of persons with a better than average capacity for advancement. The Employer should not be put in a position to risk losing exceptional young employees whose ambition would be frustrated by a system that effectively ties all promotions to seniority. The compromise we have fashioned will permit the primary interests of the Union to be protected by ensuring that within a generally unskilled workforce the great bulk of promotions will be seniority based, while in a defined number of cases the Employer's ability to reward and advance a particularly gifted or dedicated individual will be preserved.

Accordingly, we find that a hybrid provision should be added to the collective agreement that will give to the Employer the ability to advance outstanding individuals among its casual or permanent part-time employees while maintaining, for the most part, the basic standard as proposed by the Union.

For these reasons article 32.3 of the collective agreement shall be amended to omit article 21 from the list of articles which do not apply to part-time store cashiers and temporary employees. Article 21.4(a) of the collective agreement shall be amended by adding the following paragraph:

For the purpose of this article, a promotion shall be deemed to include the movement from one classification to a higher classification, or from one permanent part-time job to a full-time job; or from one permanent part-time job to another with more hours of work per week.

Article 32.4 shall be amended by substituting the following for the existing language:

Casual employees shall have the right to post for certain permanent part-time vacancies in accordance with Article 21 of the Collective Agreement. However, they shall be confined to applying for vacancies in positions at the entry level for the appropriate class series.

A casual shall only be entitled to apply for a vacant position in the classification set out above if they work in the geographic area in which the vacancy appears.

That senior qualified applicant shall be given the promotion in accordance with Article 21.5, subject to the proviso in that Article respecting special merit promotions.

A casual employee shall also have the right to apply for vacancies in classifications higher than those mentioned above, but only if there is no permanent part-time applicant.

Article 21.5(a) of the collective agreement shall be amended to read as follows:

Where employees are being considered for promotion, seniority will be the determining factor provided the employee is qualified to perform the work, subject to the proviso described in the following paragraph.

Within any calendar year the Employer may identify a limited number of permanent part-time vacancies as vacancies to be filled by special merit promotion. In no case shall special merit promotions exceed ten percent (10%) of all promotions within the calendar year. Special merit promotions shall be so identified on the job posting and shall be awarded to bargaining unit employees only. In filling special merit promotions the Boards agree to give consideration to the qualifications and ability of part-time employees and of casual employees to perform the duties of a vacant permanent part-time position. Where two (2) or more such employees are relatively equal in qualifications and abilities, then seniority shall be the deciding factor in allocating such positions.

We turn to consider the issue of work assignments. The Board considers that the position of the Union seeking a minimal level of job security for casual employees is not unreasonable. We can see no reason why a casual employee, who has satisfied the requirement of seniority by working 400 hours

in a year, should not enjoy the right to be called into a store in which he or she holds seniority, on a seniority basis. The following paragraph shall therefore be added to the appendix to the collective agreement appearing at pages 80 and 81 of the current agreement:

Hours of work shall be allotted according to the seniority of casual employees by store, provided the senior employee has the necessary job knowledge and competence to perform the work and is available.

The Board is also sympathetic to the Union's concern that casual employees not be utilized to effectively reduce the pool of work available to permanent part-time employees. The following paragraph shall therefore be added to the appendix appearing at pages 80 and 81 of the collective agreement:

The Board agrees that it will not utilize permanent part-time employees, part-time store cashiers, or casuals to replace regular full-time employees. Nor will the Board utilize casual help to replace permanent part-time employees. Any such utilization as referred to in sentence 1 or 2 of this article will not adversely affect job training opportunities for regular full-time employees or permanent part-time employees.

The collective agreement shall include the following provision providing for the transfer of seniority earned as a casual employee:

A casual employee who obtains a permanent part-time position or a full-time position shall carry his seniority attained as a casual employee in accordance with the provisions of this agreement governing the seniority of part-time employees.

The Board also deems it appropriate to include job security provisions appropriate to the permanent part-time employee. Article 5.3 of the collective agreement shall therefore be amended to read as follows:

- 5.3 Where an employee is identified as surplus, he shall be assigned on the basis of his seniority to a vacancy at the same classification in his work area, provided he is qualified to perform the work and the weekly salary of the vacancy is not greater than two percent (2%) above nor sixteen percent (16%) below the maximum salary of his class as follows:
- a) a vacancy with the same weekly hours in the same class as the employee's class;
 - b) a vacancy with the same weekly hours in which the employee has served since his appointment date;
 - c) another vacancy, the weekly hours of which shall not exceed the weekly hours of the surplus employee prior to being declared surplus.

Similar adjustments should be made with respect to the bumping procedure. Accordingly, article 5.7 shall be amended to the following form:

- 5.7 a) Within the surplus employee's work area, the Boards will identify the employee with the least seniority in the same class and with the same weekly hours in which the surplus employee is

presently working and if such employee has less seniority than the surplus employee, he shall be displaced by the surplus employee, provided the surplus employee is qualified to perform the work of such employee.

- b) Failing the opportunity for displacement under (a) above, the Board will review the other positions defined by weekly hours of work in the same class within the surplus employee's work area in descending order, until a position is found in which the employee with the least seniority has less seniority than the surplus employee. Such employee shall be displaced by the surplus employee, provided that the surplus employee is qualified to perform the work of such employee.
- c) Failing the opportunity for displacement under (b) above, the Board will review the classes and weekly positions in class series in which the surplus employee has served since his appointment date within the surplus employee's work area, in descending order, until a class or position is found in which the employee with the least seniority in the class or position has less seniority than the surplus employee. Such employee shall be displaced by the surplus employee, provided the surplus employee is qualified to perform the work of such employee.

The introduction of the new category of permanent part-time employment necessitates the establishing of a number of provisions for the hours of work and overtime of employees in that classification. While the precise numbering of these provisions must be left to the parties, the Board orders the inclusion of the following provisions in the collective agreement:

- Regularly scheduled hours of work shall be posted at least two (2) weeks in advance for each establishment and shall consist of at least two (2) hours on a day. Split shifts may be scheduled provided the minimum work

period for any part of a shift is two (2) consecutive hours.

- Hours of work may be changed without any premiums or penalty if agreed upon between the employee and management.
- Where an employee is not instructed to work overtime until the day during which the overtime is to be performed, the employee shall be reimbursed for the cost of one (1) meal to four dollars and twenty-five cents (\$4.25), provided the employee works two (2) hours or more overtime.
- An employee who is required to work before twelve (12) hours have elapsed since the completion of the employee's previous shift shall be paid time and one-half (1 1/2) for those hours that fall within the twelve (12) hour period provided that he or she is not otherwise entitled to be paid time and one-half (1 1/2) for those hours.
- Liquor Licence Inspectors who perform authorized work in excess of the hours listed in Article P.1(a)(i) shall take lieu days in payment of such overtime worked providing work demands on Inspectors are such to permit the Board to grant such lieu days no later than the end of the second month following the month in which the overtime occurred. Where this is not the case the Inspectors shall be paid overtime rates in accordance with Article P.1(a).
- An employee who works three (3) hours in excess of the applicable daily hours referred to in Article P.1 shall receive one-half (1/2) hour off with pay for a meal period.
- There shall be no duplication or pyramiding of any premium payments or compensating leave provided by this agreement.
- The Boards agree to pay a premium of five dollars (\$5.00) per day to an employee acting for the Store Manager in his absence, provided he is assigned to act for a minimum of three (3) consecutive hours. Such premium would be applicable to the person designated to act for the Assistant Manager in the absence of the Manager and Assistant Manager while working the second shift.

- Any employee (other than one covered by the foregoing paragraph) designated by the Board to replace another employee in a higher classification shall receive a premium of seventy-five cents (\$0.75) per hour for each hour such duties are performed provided he works a minimum of two (2) continuous days in the higher classification.
- There shall be one (1) fifteen (15) minute paid rest period during each four (4) consecutive hours of work.
- When an employee is required to report for work at 12 noon or thereafter and works in excess of five continuous hours (inclusive of the rest periods listed above), he shall be eligible for a one-half hour paid meal period.
- Employees whose positions are classified in the classes listed in Schedule "C" shall receive a shift premium of forty cents (\$0.40) per hour for each hour worked before 6:00 a.m. or after 6:00 p.m.
- It is understood and agreed that the arrangements regarding hours of work and overtime may be entered into between the parties with respect to variable work days or variable work weeks which includes compressed work week arrangements.

The parties are agreed on applying the collective agreement provisions for attendance credits for the benefit of permanent part-time employees. The Union further seeks the application of attendance bonus benefits available to regular full-time employees under article 10 of the agreement. The Board is not persuaded that the payment of attendance bonus is appropriate in

a part-time employee. The Union further seeks the application of attendance bonus benefits available to regular full-time employees under article 10 of the Agreement. At a minimum, that issue should not be addressed without some experience of the patterns of working hours and attendance that will emerge under the newly established classification of permanent part-time employees. For these reasons, we make no award in respect of the Union's request for the attendance bonus. We likewise make no provision at this time in respect of the Union's positions on sickness and injury leave as well as entitlement on death.

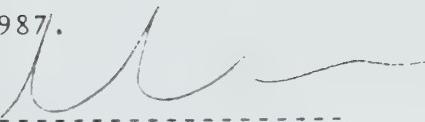
The Board accepts the position of the Employer on benefits as outlined in Part IV of its written submission to this Board. These include O.H.I.P., Supplementary Health and Hospitalization (including Vision Care), Life Insurance - both basic and supplementary, the Long Term Income Protection Plan and the Dental Plan.

The parties are not fully agreed on the formula for maternity leave to be accorded to permanent part-time employees. One of the general concerns giving rise to the creation of this category of employee is to protect against disadvantages historically visited upon part-time workers many of whom are female. In our view, the maternity leave protections of a permanent part-time employee should be no less generous than those enjoyed by a regular full-time employee, on a pro-rata basis. The Board therefore orders that the provisions of article 19 of the collective agreement, with such changes and adjustments

as are appropriate to the pro-rated treatment of a permanent part-time employee, be made applicable to permanent part-time employees.

As is apparent, the award of this Board takes as its principal focus the fundamental issues of job security and seniority for casual and permanent part-time employees. While other issues have been addressed, many of them remain to be more fully explored and refined in the process of ongoing bargaining. Because the introduction of some of the provisions in our Award involve wholesale changes of the collective agreement, we leave to the parties the numbering and placement of the provisions in this Award, unless otherwise specified, to the parties, as well as the wording of the maternity leave provision. The Board orders, as a further term of the collective agreement, that the employer post the permanent part-time positions which are to be established within six months of the date of this Award. However, if management demonstrates that additional time is required, a request for such additional time, not exceeding three months, will not unreasonably be denied by the union. We retain jurisdiction in the event of any dispute between the parties respecting the transcription of the terms of this Award into the specific language of their collective agreement, or respecting any other aspect of the interpretation or implementation of our Award.

DATED at Toronto this 30th day of June 1987.



MICHEL G. PICHER
Chairman

"GEORGE MILLEY"

Employer Nominee

"SEAN O'FLYNN"

Union Nominee
(addendum attached)

Addendum to the Award

It is trite to say (but nevertheless essential to say it), that most people have to work in order to provide food, shelter, clothing, transportation, education and recreation and general nurture for themselves and their dependants.

Again, most people would like to have a full-time job; a job that provides some promise of employment for tomorrow, next week and the next year, if possible.

On the other hand, employers, particularly in certain retail and service industries have gone down the road of decreasing the number of permanent full-time employees and increasing the number of part-time and casual jobs. In following this policy, the goal of the employer is clear, it is to maximize profits, or at least to lower costs and increase profits.

To the employer, the employees are means to the goal of making a profit, and the fact that workers may need full-time jobs rather than casual or part-time jobs is of marginal, if any, concern.

While there are exceptions to the above general statements, the exceptions serve to prove the rule.

Workers and their unions have been concerned about the trend towards creating casual and part-time jobs rather than full-time jobs and have consistently and persistantly lobbied governments and tried to negotiate with the employers to keep casual and part-time jobs to a minimum and to achieve pro-rated wages, benefits including seniority and job security for casual and part-time workers.

The Liquor Control Board over the years has resisted the efforts to get pro-rated benefits, including some job security and seniority rights for the casual and part-time workers. This award is a much needed breakthrough for these workers. The only fly in the ointment is the 10% hybrid promotion clause, which is not the kind of formula I like to see in a collective agreement. But given, a) that I have been assured by the chairman, Mr. Picher, that this clause will apply only to the pool of casual and part-time employees and, b) that this award gives much needed rights to these workers in the important areas of job security and promotion, I have made this award unanimous.

Yours sincerely,

per/pro Áine O'Flynn
Sean O'Flynn

IN THE MATTER OF AN ARBITRATION UNDER

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

BEFORE:

THE ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL

BETWEEN:

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

(TRADE UNION)

AND:

THE CROWN IN RIGHT OF ONTARIO
(MANAGEMENT BOARD OF CABINET)

(EMPLOYER)

BEFORE:

D. H. Kates, Vice Chairperson
Heather J. Laing, Member
Sandra Nicholson, Member

FOR THE TRADE UNION:

Joanne Miko
Labour Relations Officer,
OPSEU

FOR THE EMPLOYER:

Lynn Horton
Staff Relations Officer
Staff Relations Branch

HEARD AT TORONTO, ONTARIO ON DECEMBER 6, 1989.

A W A R D

IN THE MATTER OF a wage dispute under Article 5.8 of the Collective Agreement with respect to working conditions and employees benefits and of salary rates for the revised Technologists Medical Laboratory series.

UPON reviewing the submissions of the parties and in resolution of the issues referred to The Board of Arbitration, the Board orders as follows:

1. Effective October 1, 1986 the salary rates then in effect for Technicians 2, 3 and 4 Medical Laboratory shall be adjusted by the addition of \$14.50 per week, and those adjusted rates shall be applicable to the Technologists 1, 2 and 3 Medical Laboratory respectively.
2. Thereafter the rates shall be adjusted to reflect the annual Technical Services Category settlements.
3. Effective April 1, 1988, the salary rates for the Technologists Medical Laboratory as adjusted under points 1 and 2 above shall be further adjusted by the addition of \$8.70 per week, and subsequent category increases will be recalculated based on the new rate.

With the consent of the parties, The Board has decided not to issue reasons for its order.

Dated at Toronto, this 6th day of December, 1989.

"David H. Kates"

"Heather Laing"

"Sandra Nicholson"

IN THE MATTER OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT
AND IN THE MATTER OF AN ARBITRATION

T/0014/86

B E T W E E N :

THE CROWN IN RIGHT OF ONTARIO
AS REPRESENTED BY MANAGEMENT BOARD OF CABINET

- a n d -

THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION

AND IN THE MATTER OF THE LAW ENFORCEMENT CATEGORY

BOARD OF ARBITRATION:

JANE H. DEVLIN	CHAIRMAN
GEORGE MILLEY	EMPLOYER NOMINEE
FRED TAYLOR	UNION NOMINEE

Appearances for the Employer

W. Gorchinsky
E. Moolgoakar
C. Trueman

Appearances for the Union

Terry Baxter
Bob Hobdon
Bob Brock
Bud Knight

The Law Enforcement category is one of nine occupational categories into which the Ontario Public Service is divided for purposes of wage bargaining. At issue in this case are the wages to be paid to some 37 Instructors at the Ontario Police College in Alymer, Ontario. The most recent wage agreement expired on March 31, 1986.

The Union proposed that the term of the agreement covered by the Board's award be from April 1, 1986 to March 31, 1987. It was the position of the Union that the Board ought to award increases comparable to those freely negotiated with the Ontario Provincial Police. The O.P.P. collective agreement is for a period of one year from January 1, 1986 to December 31, 1987 and makes provision for the following wage increases:

Effective January 1, 1986 3.91%

Effective July 1, 1986 1.49%

The Employer acknowledged that since 1975, Instructors at the Ontario Police College have received approximately the same percentage increases as those negotiated with the uniformed staff of the O.P.P. The Employer contended, however, that the relationship which has existed in the past is no longer appropriate. In support of this submission, the Employer pointed out that while some Instructors are recruited from the O.P.P. and Municipal Police forces, once appointed,

they are no longer police officers but civilians. It was further submitted that there are a number of other distinctions between Instructors at the Ontario Police College and the O.P.P. with regard to hours of work and working conditions. The Employer contended that comparisons with other categories within the Ontario Public Service are more appropriate and that particular consideration ought to be given to the wage increase negotiated for the Administrative Services category as Instructors at the Ontario Fire College are included within this category. For the calendar year 1986, this category received a general increase of 4.24%. Although certain classifications received an additional increase, this was not true of the Instructors with whom the Employer proposed that the comparison be made.

The Employer requested that we extend the term of the wage agreement for the Law Enforcement category to December 31, 1987 or, in other words, for a period of twenty-one months to coincide with the termination of the wage agreements for other categories as well as the termination of the agreement in respect of working conditions. During the term of the agreement, the Employer proposed a salary increase of 3.1% effective April 1, 1986 together with an additional increase of 3.25% effective January 1, 1987. The Board was advised that the initial increase of 3.1% represents an increase of 4.24% which is equivalent to the increase received by the Administrative Services category prorated over nine months as the agreement covering the

Instructors at the Police College does not become effective until April 1, 1986.

In the course of argument, both parties referred to the decision of a board of arbitration chaired by Mr. Scott which established the wage rates for the Law Enforcement category for the predecessor agreement which expired on March 31, 1986.

Before the Scott board, the Union also sought to achieve comparability with the O.P.P. over the two-year term agreed upon by both parties. The Employer, on the other hand, argued that the board ought to take into account the state of the economy and award wage increases in line with those negotiated in the private sector. In an unanimous decision dated October 2, 1985, however, the board awarded wage increases roughly comparable to those freely negotiated with the O.P.P. In making this award, the board commented as follows:

" ... "

While the Board is cognizant of the fact that this exceeds the guidelines of Bill 111, it is justified based on the historical relationship that has been in existence for at least 8 years between this category and the O.P.P.

" ... "

The Union updated the information provided to the Scott board and submitted that there was an onus on the Employer to demonstrate some compelling new circumstances failing which we

ought to follow the Scott award and find in favour of comparability. To do otherwise, it was submitted, would undermine the process of interest arbitration. In contrast, the Employer contended that the Scott award was binding for the term of the prior wage agreement only and that to simply follow that award would undermine the independence of this Board and the collective bargaining process.

The historical relationship which has existed between the Instructors at the Ontario Police College and the O.P.P. in terms of wage increases was not disputed by the Employer and was documented in the Union's submission to the Board. A comparison of wage increases reveals that since 1975, Instructors at the Ontario Police College has received increases of 97.17% whereas the O.P.P. have received increases totalling 99.30%. The historical relationship was also recognized by the Scott board and formed the basis of its wage award.

While Instructors at the Ontario Police College are not police officers and there are differences in hours of work and working conditions between the Instructors and the O.P.P., there was no suggestion that these differences are of recent origin. These differences existed over many years when the Employer voluntarily agreed to pattern wage increases for the Law Enforcement category after those negotiated with the O.P.P. and were also fully canvassed in the hearing before the Scott board.

While the parties have, in the past, considered increases in the Administrative Services category, we can find no basis for preferring this comparison to that with the O.P.P. other than the Employer's submission that such a comparison is more appropriate. In fact, in Re OPSEU (Smith et. al) and The Crown in Right of Ontario (Ministry of the Solicitor General), GSB Files 78/84 to 81/84 (Saltman (unreported)) which was referred to by the Employer, the Grievance Settlement Board determined that there were significant differences between the duties of Instructors at the Ontario Fire College and those at the Ontario Police College with whom the comparison was made.

Clearly, the Scott award had application only to the wage agreement in effect from April 1, 1984 to March 31, 1986. That award, however, was rendered only 18 months ago and given the nature of the award and its finding in favour of comparability, we agree with the Union that the Employer would have to make a compelling case to justify our adopting a different approach. The Employer, however, has not established such a case nor demonstrated that there is a more appropriate basis for comparison. Our award, therefore, like the award of the Scott board, is justified on the basis of the historical relationship which has existed for many years between the Law Enforcement Category and the O.P.P.

In our view, there is no basis for altering the term of the wage agreement which shall be in effect from April 1, 1986 to March 31, 1987. During the term of the agreement, the Board awards the following wage increases:

Effective April 1, 1986	3.75%
Effective October 1, 1986	1.50% (not compounded)

The Board shall remain seised for purposes of implementation of this award.

DATED AT TORONTO, this 30th day of March , 1987.

Terry H. Deller
Chairman

(dissent to follow)

Employer Nominee

H. L. Taylor
Union Nominee

Tly/S

IN THE MATTER OF AN ARBITRATION
BETWEEN
THE CROWN IN RIGHT OF ONTARIO
(ONTARIO POLICE COLLEGE)
and
THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Dissent of George Milley

I have read the majority report in the above matter and, with due respect to my colleagues, I am unable to agree with their conclusion.

It is not my intention to discuss the overall amount of the wage award itself. In the light of increases granted other Public Service Categories, it is probably not too wide of the mark.

However, I must object to the standard adopted by my colleagues in reaching their conclusion. Their conclusion appears to be that because the 1985 Scott Board based it's award on a perceived comparability with the Ontario Provincial Police, this Board is obliged to follow in it's predecessor's footsteps. and adopt the same rationale.

The Scott Board based it's position entirely on an historic relationship which had existed some eight years between the Ontario Police College and the Ontario Provincial Police. The present Board, without questioning it's merits, follows the same principle.

The Scott award, the majority says, was rendered only eighteen months ago and the Employer would have to make a compelling case to justify our adopting a different approach. The Employer has not established such a case nor demonstrated that there is a more appropriate basis for comparison.

In general, I agree with that principle. That is, that prior awards in similar cases ought to be given substantial persuasive weight by Arbitration Boards. However, there is an important exception to this principle. Brown and Beatty, in Canadian Labour Arbitration, para. 1:3000, describes the prevailing view as follows:

"It is not good policy for one Board of Arbitration to refuse to follow the award of another Board in a similar dispute between the same parties arising out of the same Agreement where the dispute involves the interpretation of the Agreement. Nonetheless, if the second Board has the clear conviction that the first award is wrong, it is its duty to determine the case before it on principles that it believes are applicable."

While the above excerpt refers to grievance Arbitration, it is relevant, as well, to Interest Arbitration. Thus, if it is demonstrated that the Scott Board was wrong, the present Board has a duty to determine the case on other principles.

In my view, the evidence clearly demonstrates that the principle adopted by the Scott Board was wrong. The only reason given by that Board for comparison with the O.P.P. was some eight years historic wage relationship. With respect, this is not sufficient reason to justify the Board's adoption of the O.P.P for wage comparison, nor, in my view does it satisfy the onus which rests with the Board to determine

whether there is, in fact, a justifiable comparison between the two groups.

Up to now, it has been generally accepted that to justify wage comparability between two groups, there must be a similarity in their duties, skills, responsibilities and working conditions. No such similarity exists between the O.P.P. and the O.P.C. and it is significant to note that neither the Scott Board nor the present Board makes any attempt to show a similarity.

The O.P.P. are required to enforce the law; they are faced with the hazards and dangers of law enforcement; they are required to move to any location in the Province; they are required to work rotating shifts, 7 days a week, 24 hours a day.

The Police College Instructors, on the other hand, are teachers; they are civil servants in every sense of the word. They work normal civilian hours, five days a week without weekend or shift work; they are not required to enforce any laws and they have none of the hazards of law enforcement.

This evidence was not disputed by the Union and, indeed, their spokesman freely admitted the instructors did not perform Police duties. Additionally, it was noted by the Employer that in negotiations O.P.P. salaries are related to the Police Force market and not to the civilian Public Service market.

Whatever the reason for the earlier use of the O.P.P. comparison, the evidence is overwhelming that no valid comparison now exists between the duties, responsibilities and working conditions of the two groups. Thus, in my view, there is a clear conviction that the Scott award was wrong and I have no hesitation in rejecting it. Similarly, I reject the majority award in the present instance because it relies entirely on the Scott award and makes no attempt, otherwise, to justify its decision.

I refer again to the majority remarks that the Employer would have to make a compelling case to justify our adopting a different approach; that the Employer has not established such a case nor demonstrated that there is a more appropriate basis for comparison.

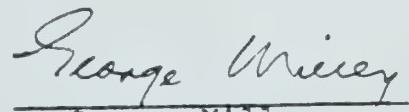
In my view, and with respect, the Employer has made a convincing and compelling case that there is no comparability between the two groups. Thus, not only is there justification for adopting a different approach, I suggest also, there is a duty to do so. Nor, in my view, is it correct to say that unless he demonstrates there is a more appropriate one, the Employer must stay with the existing basis for wage comparison. Once the Employer or the Union has demonstrated, as the Employer has done in this case, that the comparison is inappropriate, then it ought to follow there is no longer a requirement that he stay with that comparison. With respect to providing a more appropriate

riate basis for comparison, almost all of the other categories of employees in the Public Service Sector have no other single cohesive group for comparison in wage negotiations. They are guided by general wage criteria such as, Private Sector increases, Consumer Price Index, Salary Relationships between the groups and other relevant factors. In the case of the Ontario Police College Instructors, I see no reason why the Employer should be required to establish a more rigorous standard than that which applies to other categories nor to provide a cohesive wage comparison group when, in fact, one may not exist.

Finally, my colleagues note that the Scott award was unanimous. While, technically, this is correct, the record shows that the Employer Nominee registered a strong dissent in the form of an addendum against the comparison between the O.P.P and the Ontario Police College Instructors.

For the foregoing reasons, I would have rejected the Union's request to designate the O.P.P. as an appropriate group for wage comparison and held that no comparability exists between the two groups and further, that the past wage relationship is not sufficient reason to justify its continuance.

Respectfully submitted,


George Milley



Ontario Public Service
Labour
Relations
Tribunal

Fonction Publique de l'Ontario
Tribunal Administratif
des Relations
du Travail

180 Dundas Street West, Suite 2100, Toronto, Ontario M5G 1Z8
180, rue Dundas Ouest, Bureau 2100, Toronto, (Ontario) M5G 1Z8

Telephone/Téléphone
416/598-0688

T/0036/86

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

BETWEEN:

The Ontario Public Service Employees Union
(Technicians Photographic Class Series)

Union

- and -

The Crown in Right of Ontario
(Management Board of Cabinet)

Employer

BEFORE:

J.E. Emrich - Chairperson
L. Robbins - Member
P. Camp - Member

FOR THE UNION:

T. Baxter, Negotiator
J. Miko, Job Evaluation Officer
Ontario Public Service Employees Union

FOR THE EMPLOYER:

L. Horton, Staff Relations Officer
C. Taylor, Staff Relations Officer
D. Maynard, Senior Pay & Classification
Officer
L. England, Senior Pay & Classification
Officer
Management Board of Cabinet

HEARINGS:

April 26, 1988
November 28, 1988

This board of arbitration was constituted pursuant to the Crown Employees Collective Bargaining Act R.S.O. 1980, c.108 s.11 to hear a dispute concerning the setting of salary ranges for the Technician Photographic (Photo-Techs) series. This series of classifications falls within the Technical Services Category, which covers 139 classifications. The issue between the parties was triggered by a revision to the classification standards for the Photo Techs in 1985. Commencing in April, 1986, the parties met to negotiate the salary range for the revised series in accordance with the provisions of article 5.8 of the collective agreement:

- 5.8 When a new classification is to be created or an existing classification is to be revised, at the request of either party the parties shall meet within thirty (30) days to negotiate the salary range for the new or revised classification, provided that should no agreement be reached between the parties, then the Employer will set the salary range for the new or revised classification subject to the right of the parties to have the rate determined by arbitration.

On July 8, 1986, the Union presented to the Employer a 57 page brief detailing its position. Negotiations continued for a total period of 18 months but were inconclusive. On January 1, 1987, the Employer implemented the new class standards and established salary ranges for the four levels pending determination of the matter by this board of arbitration. Subsequently, on January 21, 1987, the parties made application to the Ontario Public Service Labour Relations Tribunal for the appointment of a mediator. The parties met in mediation during March and October, but did not reach a tentative settlement until November 5, 1987, a copy of which was appended as Exhibit 5 to the Union's brief, and Exhibit 2 of the Employer's brief. The settlement was as follows:

The parties hereto have agreed to all matters in dispute and have agreed to recommend unanimously the following terms in respect of the Technician Photographic class series in the Technical Services Category to their principals:

1. Salaries

The salary rates for all classes in the Technician Photographic class series are as shown in Appendix A attached hereto.

2. Retroactivity

The effective dates for the salary rates for all classes in the Technician Photographic series are shown in Appendix A attached hereto. These salary rates are retroactive to those dates on a full or pro-rata basis to all employees who are or were in this class series and shall apply to all overtime worked.

Appendix A

Technicians Photographic

Technician 1, Photographic

Old Rate:	371.45	381.55	392.01	402.76	413.80
December 1, 1985	378.88	389.18	399.85	410.82	422.08
January 1, 1986	398.73	409.22	420.08	431.25	442.71
January 1, 1987	419.11	429.79	440.84	452.21	463.88

Technician 2, Photographic

Old Rate:	398.87	410.31	421.77	434.16	446.92
December 1, 1985	406.85	418.52	430.21	442.84	455.86
January 1, 1986	427.20	439.08	450.98	463.84	477.10
January 1, 1987	448.09	460.18	472.30	485.39	498.89

Technician 3, Photographic

Old Rate:	423.21	435.62	448.43	462.48	476.51
December 1, 1985	440.14	453.04	466.37	480.98	495.57
January 1, 1986	461.09	474.23	487.80	502.67	517.52
January 1, 1987	482.59	495.97	509.78	524.92	540.04

Technician 4, Photographic

Old Rate:	451.96	465.96	480.00	495.05	509.90
December 1, 1985	479.08	493.92	508.80	524.75	540.49
January 1, 1986	500.73	515.84	530.99	547.23	563.25
January 1, 1987	522.94	538.33	553.75	570.28	586.59

However on December 4, 1987 the Union notified the Employer that the Photo Techs had rejected the settlement on the ratification vote. Following this rejection, the parties proceeded under the auspices of the Ontario Public Service Labour Relations Tribunal to establish this board of arbitration.

There was no dispute between the parties as to the wording of the new class standards. The revision condensed the number of levels from six under the old class standards to four levels under the new class standards corresponding to the following levels of responsibility: working level, senior working level, advanced working level, and specialist.

In their briefs filed at arbitration, the parties indicated that the agreed effective date for any wage increase for the Photo Tech class series should be December 1, 1985. However, at the hearing, the Union requested the Board to consider awarding an earlier retroactivity date of twenty days prior to March 19, 1985 for those who had filed grievances on that date respecting their classification under the old class standards. These grievances are being processed by the Grievance Settlement Board for arbitration as rights disputes. The Board finds that any dispute as to the proper classification of these grievors or as to the retroactivity of any remedy awarded is properly left to the panels of the Grievance Settlement Board hearing these grievances. Thus, the effective date of the Board's award in this case shall be December 1, 1985.

At the outset of the hearing in April, it became apparent that the parties differed as to the scope of arbitral review concerning an issue under Article 5.8 of the collective agreement. The Employer contended that this Board should endorse the terms of the Memorandum of Settlement reached in November, 1987 as the best index of appropriate salary levels reached

following extensive negotiations by competent and experienced negotiators. The Employer claimed that the onus rested upon the Union to show upon clear and convincing evidence that the Settlement is unfair and unreasonable. In the alternative, if the Board decides to determine the issue of wages without reference to the settlement, the Employer contended that the issue under Article 5.8 is to determine whether and to what extent the new classification standards alter the classification structure which formed the basis for past and current wage agreements. Thus, it was argued that the factors stipulated in s.12(2) of the Crown Employees Collective Bargaining Act (C.E.C.B.A.) would be irrelevant to the Board's determination of wage levels pursuant to Article 5.8. Indeed, the Employer maintained that the Board would exceed its jurisdiction were it to take into account the factors outlined in s.12(2) of C.E.C.B.A. when setting salary ranges pursuant to s.5.8 of the collective agreement. When pressed on this argument, the Employer argued that this Board was a consensual arbitration board and not a statutory tribunal constituted pursuant to the interest arbitration provisions set out in sections 10, 11 and 12 of C.E.C.B.A. The Employer explained that the parties merely had availed themselves of the services of the Ontario Public Service Labour Relations Tribunal as an administrative convenience to assist with mediation and the constitution of this Board. The Employer insisted that those actions did not imply that the provisions of s.12 were pertinent to an arbitration pursuant to s.5.8 of the collective agreement.

The Union contended that the factors articulated in s.12(2) of the Crown Employees Collective Bargaining Act (C.E.C.B.A.) are typical factors which interest boards take into consideration when determining wages.

Furthermore, the Union pointed out that the Employer had conducted itself throughout the processes of mediation and constitution of this board as if the interest arbitration provisions of C.E.C.B.A. applied. The Union noted that article 5.8 of the collective agreement neither stipulates what factors are determinative in a wage setting exercise consequent upon a classification revision, nor excludes the factors stated in s.12(2) of C.E.C.B.A.

In April, 1988, on agreement of the parties, the Board adjourned pending receipt of an interim decision of another board of arbitration (OLRT #T/0006/87) hearing a dispute under Article 5.8 of the collective agreement in which submissions were made concerning the scope of review. The Board received a copy of this interim decision in late June, 1988. In the interim award the panel reserved its determination of the issue pending completion of the case on its merits. At the request of the parties, this Board resumed its hearing in November.

The Board begins by canvassing what the effect should be of the tentative settlement in November upon the issue of wages for the revised class series. In In Re Toronto Transit Commission and Amalgamated Transit Union, Local 113 (1985) 17 L.A.C. (3d) 385 (Weiler), the arbitrator was called upon to consider the effect of the tentative settlement which had been rejected upon ratification. The rejection was followed by a strike. However, the strike was terminated by legislation requiring arbitration to resolve the dispute. At p.389 the arbitrator stated:

There is a broad consensus among labour arbitrators that a settlement voluntarily arrived at by competent negotiators is a much better index of the appropriate award than the opinion of an outside arbitrator whose involvement in the dispute is inherently limited. I had occasion to consider this issue in my Sixty-five

Participating Hospitals award, 1981 (Weiler)
[unreported]. There I did say that the preference for the agreed-to settlement should only be a general presumption, not an automatic, unyielding rule: otherwise, the democratic participation of union members in the ratification or rejection of their contracts would be eroded. However, I went on to state that: "If seasoned representatives produce a comprehensive package of the give and take at the bargaining table ... the product of their work must be treated as strong *prima facie* evidence of an economically sound bargain ... The arbitrator ... should treat the settlement as fixing the ballpark figures for the next contract." While being "prepared to scrutinize the terms of the tentative agreement, perhaps to find that certain items are misguided, or at least that others have been overtaken by changing economic conditions ... he should begin that inquiry on the premise that the terms actually agreed to by the representatives of the parties are a sound and workable basis for the new contract to be revised only if and when this is clearly shown to be warranted" ...

In Re All-Way Transportation and A.T.V., Local 113 (1986) 25 L.A.C.

(3d) 321 (Brown) the board was constituted pursuant to back-to-work legislation which had ended a strike. The strike was initiated when a settlement was rejected at ratification. Mr. Brown adopts the reasoning of the TTC case and refers as well to an unreported decision of Mr. Burkett in Re Participating Hospitals and CUPE, at p.329:

I have also reference to the award in Re Participating Hospitals and C.U.P.E., (December 22, 1982) (Burkett) [unreported], in which the board dealt with a memorandum of settlement rejected by the employees in a public health dispute. It was stated:

Just as a union membership which rejects the recommendation of its negotiating committee in the private sector, does so in the knowledge that it may be required to engage in an economic confrontation which may or may not result in an improved package, so also a membership which rejects the recommendation of its negotiating committee where compulsory arbitration is the final dispute settlement mechanism, does so in the knowledge that an arbitration board will consider the memorandum as evidence of that which was seen by the

negotiating committees as a realistic basis of settlement and may find that the signed memorandum constitutes an equitable basis upon which to make an award.

A statement which is particularly applicable to the present issue. Arbitrator Teplitsky in Re Peel Board of Education (May, 1981) [unreported], said at that time, "parties who reject tentative agreements and proceed to arbitration should not, as Mr. Burkett suggests, fear the adoption of the settlement by the board of arbitration. Rather they should fear a different result, one which may be worse than the settlement they have rejected".

In the All-Way case at p.327-328, Mr. Brown articulated the conventional approach concerning the effect of a settlement:

There have been many reported opinions in compulsory arbitration circumstances of arbitrators, including the present arbitrator, who have dealt with the effect of a memorandum of settlement, which indicate the conclusion that generally such settlements indicate the best evidence of what the market will bear for the issues involved and should be applied where it is found to be fair and reasonable and the economic factors support what the parties negotiated. It is not that the memorandum of settlement must automatically be applied, but is one and perhaps a persuasive criteria in resolving the dispute.

In that regard I will refer only to three of the prior awards referred to by the parties, Re Arnrior & District Memorial Hospital and CUPE, Local 2198 (April 30, 1980) (Brown) [unreported], where the board stated:

A board of arbitration, however, is not bound to apply the terms of such an agreement when a continuing dispute is referred to it for disposition and may consider all relevant factors. But in our opinion there would have to be established a substantial and significant basis for rejecting the terms of that settlement in favour of the imposition of some other terms imposed by the board ...

In the All-Way case, Mr. Brown went on to scrutinize the fairness and reasonableness of the tentative agreement on such factors as the consumer price index at the relevant time, the need for catch up to rates payable to

comparable classifications in the community, having comparable workloads and conditions, statistics concerning general levels of wage increases in the province for public and private sectors during the relevant time frame, and the company's ability to pay. These are standard criteria taken into account when setting wage levels in interest arbitration. At p.334, Mr. Brown concluded that the unratified settlement constituted a fair and reasonable compromise when assessed upon the relevant economic data. To the same effect, is the conclusion of the board of arbitration chaired by Mr. Brandt dated September 16, 1980 in Management Board of Cabinet and OPSEU (General Operational Services Category) at p.10.

Thus, in the instant case, the Board is prepared to consider the settlement of November, 1987 as *prima facie* evidence of an economically sound bargain which can be revised if it is shown clearly that an adjustment is warranted. Thus, to evaluate the fairness and reasonableness of the bargain struck at the time, a board of arbitration must examine the terms of the settlement in light of relevant factors. The parties were agreed that in general category bargaining and in bargaining for special adjustments to specific classes, the factors mentioned in s.12(2) of the CECBA must be taken into account. However, the Employer contends that these s.12(2) factors are irrelevant to the wage-setting exercise under s.5.8 because the revision to class standards is a response to the inaccuracy of the standards' description of the nature of work performed rather than being a response to wage pressures. The Employer claims that since wage levels under the old standards are set in category bargaining, any adjustment to such levels should be made only to the extent that the revision of the standards changes the level of work described. While the Board agrees that

any adjustment to the salary range for a revised classification would logically bear a proportionate relationship to the extent of the revision of the levels of work described in the revised standards, the Board finds that the value of the revision would still be assessed upon the same factors that determine the level of wages for the general category. In this regard, it would seem that the factors in s.12(2) (c) and (d) would be of greater weight because they are directly relevant to maintaining equities within a general category of related classifications and to establishing a value proportionate to the extent of the change to the level of work. However, the Board is not prepared to say, in a particular case, that the factors in s.12(2) (a) and (b) could not be arguably relevant to a wage-setting exercise under s.5.8 of the collective agreement. Indeed, it is apparent on review of the parties' briefs that these factors were taken into account by the parties themselves as they prepared for negotiations. Furthermore, in OPSEU (Ventura et al.) and Crown in Right of Ontario (Ministry of Labour) the level of wages for the revised classification of Human Rights Officers was at issue. The Board found that changes brought about by legislative amendments to the Ontario Human Rights Code had effected a substantive change to the complexity of the work assigned to this classification. The Board then assigned a value to this change. It is apparent that the case was argued on the basis that s.12(2)(c) was a relevant consideration for the Board. The Employer simply tried to narrow the sort of classifications to which comparisons may be made pursuant to s.12(2)(c). In OPSEU and the Crown (Management Board of Cabinet), a decision dated February 28, 1986 of a panel constituted to hear a grievance under s.5.8 of the collective

agreement, the majority found s.12.2(c) of C.E.C.B.A. to be a relevant consideration.

Turning to the case at hand, the Employer has put forward in its brief at pages 14-16, compelling evidence that the November memorandum of settlement constituted a fair and reasonable compromise in light of the factors mentioned in s.12(2). In the instant case, the Employer argued that the new class standards describe no substantive change to the essential levels of responsibility (ie. working level, senior working level, advanced working level and specialist). Rather, the Employer claims that the new standards merely make the differentiations between these levels of work explicit which were implicit in the old standards. These differentiations are made on the basis of the generic factors of skills and knowledge, judgment and accountability. Distinctions are drawn in levels of these factors on the defined terms of "rudimentary", "standard", "advanced" and "specialized". Since the Employer contended that the revised standards represented no change to the levels of work for the four classes of technicians, the Employer maintained that no revision to current rates for the equivalent class was warranted. In order to effect a settlement however, the Employer agreed to add 2% to the rates for T1P and T2P, 4% to the rates proposed for T3P, and 6% to the proposed rates T4P. Naturally, the general wage increases for the Technical Services Category for the relevant time period would be applied as well.

The Union advanced three major reasons why the wage increases in the rejected settlement were inadequate. The Board will deal with each in turn.

- (1) Comparison of the old and new class standards indicates that the revision expanded the skills and knowledge base for each level, broadened the scope of decision-making under judgment and introduced a new compensable factor under accountability.

The Board was not able to assess upon the material provided the extent to which any revisions made to the class standards were not properly valued by the parties through the negotiated increases in wage levels. Even if the Board were to assume, as the Union argues that the levels of skill, knowledge and judgment have been augmented through the revision, there was nothing in evidence to suggest that any such change was not fairly and reasonably valued in the Memorandum of Settlement. A comparison of the old and new standards discloses that the compensable factor of accountability, as defined in the preamble to the new standards, was implicit in the old standards, but described in terms of quality and accuracy of work, supervisory or group leadership functions assumed, and production related functions. Thus, the Board is not satisfied that there is sufficient evidence put before it on this ground from which it could conclude that these changes were not taken into account by the parties or that such revisions were valued unfairly or unreasonably on this basis.

- (2) The proposed wage increase is not equitable when compared with the Publicity Photographer series.

The Union argued that the class series of Photo-Techs 1-4 and Publicity Photographers 1-3, both of which fall within the Technical Services Category, were comparable in respect to the compensable factors, the qualifications required, work performed, responsibility assumed and nature of the services rendered. The Union pointed out that even with the increases proposed in the unratified settlement, there is a disparity

between the classes to the advantage of the Publicity Photographer class series ranging from 5-1/2 to 15% between the levels over the two year period 1986-87. The Board is satisfied that the parties canvassed this job comparison in depth during their negotiations. Furthermore, the material disclosed in Tab 12 to the Employer's brief and in the Employer's written rebuttal, establishes that there are substantial and important differences between these class series in respect to the nature of the work performed and responsibility assumed. Thus the Board is not persuaded on this ground that the wage increases negotiated are unfair or unreasonable.

(3) Comparable classifications outside the Government of Ontario are paying higher wages.

At p.8 of the Union brief, a table sets out wage level comparisons of the working level, Photo-Tech 3 with the working level of other unionized work places such as the Federal Government, Ontario Hydro, Bell Canada and the Council of Printing Industries. This table was supplemented with job descriptions at Tab 9 for some of the comparables. An average differential between the Photo-Tech rates and the external comparisons were 26.37% in 1986 and 27.26% in 1987. At Tab 13 of the Employer's brief, the Employer presents the data and correspondence it received as part of its salary survey of fifteen employers who were thought likely to have photographic technicians on staff. The comparables chosen where Ontario Hydro, the Federal Government and Bell Canada. These data show that the rates negotiated are not unfair or unreasonable in respect to these external comparables. The Board surmises that much of this discrepancy could be attributed to differences in the parties' methodology in conducting their salary surveys. The Board was not assisted by the parties to be able to

assess which survey yields results which are more reliable and reflective of comparable working conditions, duties, responsibilities, qualifications, market conditions, and time frames. The Board can only conclude that at the time of their negotiations, the parties conducted sufficient market research to inform themselves of those factors which are reflected in s.12(2) (a) (b) and (d) of C.E.C.B.A..

Having reviewed carefully the submissions and evidence adduced by the parties, the Board concludes that the increases negotiated in the memorandum of settlement dated November 5, 1987 are fair and reasonable and the Board accordingly adopts the terms of that settlement as the terms of its award. Naturally, any general category wage increases should be applied by the parties as well during the relevant time period. The Board reserves jurisdiction to deal with any problems arising from the implementation of its award which the parties are unable to resolve.

Dated this 2nd day of May, 1989.

Jane E. Enrich
Jane E. Enrich Chairperson

Larry Robbins

Larry Robbins Union Nominee

Peter D. Camp
Peter Camp Employer Nominee

T/0018/87

IN THE MATTER OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT
AND IN THE MATTER OF AN ARBITRATION

B E T W E E N:

THE MANAGEMENT BOARD OF CABINET OF THE GOVERNMENT
OF THE PROVINCE OF ONTARIO

("the Employer")

- and -

THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION

("the Union")

AND IN THE MATTER OF THE LAW ENFORCEMENT CATEGORY

BOARD OF ARBITRATION:

Maureen K. Saltman, Chairman
George Milley, Employer Nominee
Brian Switzman, Union Nominee

APPEARANCES:

FOR THE EMPLOYER: Rick Itenson, Representative
Elsie Moolgaokar
Greg Polan
Joan Crisford

FOR THE UNION: Terry Baxter, Representative
Bob Hebdon, Representative

A W A R D

The Ontario Public Service is divided into nine occupational categories for the purposes of wage bargaining. This arbitration deals with wage rates for the Law Enforcement category, the smallest of the occupational categories, which is comprised of some 37 Instructors of the Ontario Police College in Aylmer.

The previous wage agreement between the parties expired on March 31, 1987. With respect to renewal of the agreement, the Union is proposing a one-year agreement from April 1, 1987 to March 31, 1988, with a wage increase of 4.2% effective April 1, 1987 and a further 1.43% effective October 1, 1987 whereas the Employer is proposing a 21-month agreement, effective from April 1, 1987 to December 31, 1988, with a wage increase of 4% effective April 1, 1987 and a further 3% effective April 1, 1988.

The Union's proposal was based on an historical relationship with wage rates negotiated for the Ontario Provincial Police ("O.P.P."). It was the Union's contention that Instructors at the Ontario Police College have received wage increases comparable to the O.P.P. for a period of some 20 years. In support of its contention, the Union submitted evidence which indicates that since 1975, Instructors at the Ontario Police College have received wage increases totalling 102.98% whereas for the same period the O.P.P. have received wage increases totally 105.4%.

Although the Employer admitted the existence of an historical relationship with the O.P.P., the Employer submitted that this relationship was erroneous or no longer applicable. In support of its submission, the Employer maintained that Instructors at the Ontario Police College are not police officers; that their duties are not comparable to the O.P.P.; and that there are significant differences in working conditions. The Employer also pointed out that Instructors at the Ontario Police College are paid considerably higher wages than employees and, in particular, Instructors in other categories in the Ontario Public Service. The Employer further submitted that the current wage rates were apparently satisfactory as there is no shortage of applicants for job vacancies at the Ontario Police College. Finally, the Employer submitted that the Board's award ought to be based on the criteria in Subsection 12(2) of the Crown Employees Collective Bargaining Act and not on previous arbitration awards which have perpetuated the historical relationship with the O.P.P. Based on these criteria, the Instructors ought to be awarded a wage increase which is comparable to the wage increase negotiated in 1987 for six of the eight occupational categories within the Ontario Public Service rather than the increases negotiated for the uniformed staff of the O.P.P. who are not members of the Ontario Public Service.

Reference to previous arbitration awards was also made by the Union. There are in fact two previous awards which are

relevant to a determination of the issues in this case. The first is an award of a board of arbitration chaired by Victor Scott, which covers the period April 1, 1984 to March 31, 1986: see Re The Crown in Right of Ontario, as represented by Management Board of Cabinet and The Ontario Public Service Employees Union with respect to Instructors, Ontario Police College, October 2, 1985 (unreported) (the "Scott award"). The Employer took the position before that board that the primary consideration in determining wage increases for Instructors at the Ontario Police College was the state of the economy, including the provincial restraint programme, and that the increases ought to reflect increases negotiated in the private sector. The Union took the position that the wage increases ought to be comparable to those freely negotiated with the O.P.P. The board accepted the Union's position and awarded wage increases roughly comparable to those negotiated with the O.P.P. The basis for the board's award was "the historical relationship that has been in existence for at least 8 years between this category and the O.P.P.".

The second award relates to the period from April 1, 1986 to March 31, 1987 and was issued by a board of arbitration chaired by Jane Devlin: see Re The Crown in Right of Ontario as represented by the Management Board of Cabinet and the Ontario Public Service Employees Union; Law Enforcement Category, March

31, 1987 (unreported)(the "Devlin award"). Before that board, the Union submitted that, unless the Employer demonstrated some compelling new circumstance which justified a different approach, the Scott award should be followed. To do otherwise, the Union argued, would be to undermine the interest arbitration process. The Employer, on the other hand, submitted that the Scott award was binding for its term only and should not be followed by the subsequent board. The effect of following the Scott award, it was argued, would be to undermine the independence of the board as well as the arbitration process. The board accepted the Union's submission on this point. The essence of the board's award is set out at page 5 as follows:

"Clearly, the Scott award had application only to the wage agreement in effect from April 1, 1984 to March 31, 1986. That award, however, was rendered only 18 months ago and given the nature of the award and its finding in favour of comparability, we agree with the Union that the Employer would have to make a compelling case to justify our adopting a different approach. The Employer, however, has not established such a case nor demonstrated that there is a more appropriate basis for comparison. Our award, therefore, like the award of the Scott board, is justified on the basis of the historical relationship which has existed for many years between the Law Enforcement Category and the O.P.P."

It is against this background that the matter of wage comparability is raised again. This time, the Employer argued that the duty of the Board is to apply the criteria in Subsection 12(2) of the Crown Employees Collective Bargaining Act

and that these criteria do not include historical relationships. The Board cannot agree. The duty of the Board, as set out in Subsection 12(1), is to "examine into and decide on matters that are in dispute within the scope of collective bargaining under this Act". In discharging its duty, the Board is required to consider relevant factors, including the need for qualified employees (Para. 12(2)(a)); conditions of employment in similar occupations outside the public service (Para. 12(2)(b)); conditions of employment within the public service (Para. 12(2)(c)); and the need to establish fair and reasonable terms and conditions of employment (Para. 12(2)(d)). This list, however, is not exhaustive as the Act expressly states that the Board is required to take into consideration all relevant factors to the matters in dispute.

In view of the history of negotiations between the parties, it can hardly be disputed that the historical relationship with the O.P.P. is relevant to the wage rates for Instructors at the Ontario Police College. For some nine years or more, the Employer voluntarily agreed to wage increases based on comparability with the O.P.P. Subsequently, this historical relationship has been recognized by two boards of arbitration in wage awards covering the periods April 1, 1984 to March 31, 1986 and April 1, 1986 to March 31, 1987. In these circumstances, we find that there is some obligation upon the Employer to demonstrate why this relationship should not be maintained. This

obligation cannot be satisfied by reference to different job functions and working conditions between Instructors at the Ontario Police College and the O.P.P. as these differences have existed for many years and throughout the period that the Employer agreed to wage comparability with the O.P.P. What must be demonstrated is that the basis upon which the Employer agreed to comparability is no longer applicable or sufficient in the circumstances. That evidence was not forthcoming and so there is no basis for deviating from the pattern of wage comparability which has been accepted for so many years.

In light of the historical relationship to the O.P.P. and the other criteria in Subsection 12(2) of the Act, the Board awards the following wage increases:

Effective April 1, 1987, 4.2% across-the-board for all employees; and

Effective October 1, 1987, 1.5% (non-compounded) across-the-board for all employees.

In the Board's view, the case has not been made for altering the term of the agreement. Accordingly, the wage increase effective October 1, 1987 shall remain in effect until the expiration of the wage agreement on March 31, 1988.

The Board will remain seized in the event that difficulties arise in the implementation of this award.

DATED AT TORONTO, this 11th day of April 1988.



Chairman

"I dissent" - Dissent to
follow
Employer Nominee

"I concur - Brian Switzman"
Union Nominee



Ontario Public Service

Labour
Relations
Tribunal

Fonction Publique de l'Ontario

Tribunal Administratif
des Relations
du Travail

180 Dundas Street West, Suite 2100, Toronto, Ontario M5G 1Z8

416/598-0686

T/0039/87

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU

Union

- and -

The Crown in Right of Ontario
(Management Board of Cabinet)

Employer

- and -

The Establishment of Salary Ranges for the
Psychometrist Class Series

Before:

M.K. Saltman
L. Robbins
I. Cowan

Chairperson
Member
Member

For the Complainant:

E. Hipfner
Staff Relations Officer
Staff Relations Branch
Management Board of Cabinet

For the Respondent:

J. Miko
Representative
Ontario Public Service
Employees Union

Hearings:

A W A R D

This arbitration concerns the establishment of salary ranges for the Psychometrist class series. This series covers positions in provincial facilities and institutions which come within at least three Ministries: Community and Social Services, Correctional Services and Health. (Although there was some suggestion that there were also Psychometrist positions within the Ministry of Education, this could not be confirmed.)

The Psychometrist class series has been in existence since 1965, at which time the class standards came into effect. When promulgated, the class standards covered three levels: Psychometrist 1 (3-year B.A.), Psychometrist 1 (Honours B.A.) and Psychometrist 2 (Masters). The only difference between the two levels of Psychometrist 1 was in the credentials required for each level; the duties and responsibilities were the same.

In 1981, a review of the Psychometrist class standards was undertaken. The purpose of the review, at least in part, was to eliminate the emphasis on credentials. In accordance with this review, revised draft standards were submitted to the Union for comment in November, 1981 and again in February, 1982. No further action was taken until April, 1985 when the Union's

comments were again solicited. Following receipt of the Union's comments, the standards were finalized and submitted for approval to the Civil Service Commission on December 19, 1985. Approval was given the same day. It was not until January, 1987, however, that the Union was given notice of the new standards pursuant to Article 5.8 of the collective agreement, which reads as follows:

"5.8 When a new classification is to be created or an existing classification is to be revised, at the request of either party the parties shall meet within thirty (30) days to negotiate the salary range for the new or revised classification, provided that should no agreement be reached between the parties, then the Employer will set the salary range for the new or revised classification subject to the right of the parties to have the rate determined by arbitration."

Article 5.8 makes provision, when a new classification has been created or an existing classification revised, for the parties to attempt to negotiate a salary range for the new or revised classification. If agreement is not reached, the Employer may establish the salary range unilaterally and, if the Union objects to the salary range so established, the matter can be determined at arbitration: The Crown in right of Ontario and Ontario Public Service Employees Union; Grievance respecting Establishment of Salary Ranges for the Probation Officer Class Series, February 28, 1989 (Saltman (unreported)) (the "Probation Officers" case).

Following notice to bargain under Article 5.8, the parties met on three separate occasions between September and November, 1987 in an attempt to agree on a salary range. Although agreement was reached on the wording of the class standard, the salary range could not be agreed upon. Accordingly, the matter was referred to this Board of Arbitration for determination.

In order to warrant an increase in salary range under Article 5.8, there must be a "new" or "revised" classification within the meaning of that Article. Moreover, in order to constitute a revised job classification, there must be a change in job content: see, e.g., Re Nurses' Association Joseph Brant Memorial Hospital and Joseph Brant Memorial Hospital (1972), 24 L.A.C. 104 (Hinnegan). However, it is not every change in job content, but only those changes which can be described as "substantial" or "significant", that are compensable under Article 5.8.

In this case, the new class standard contains significantly more detail and employs a different format from the old standards. The old standards, which used the "grade description" format, described the job function in terms of the duties actually performed whereas the new standard, which uses the "factorial format", describes the job function on the basis

of certain compensable factors, known as "allocation factors", namely, "knowledge and skills", "professional responsibility", and "contacts". The Employer took the position, notwithstanding the change in format, that there has been no substantial change in job function. The Union, on the other hand, took the position that, apart from the change in format, there has been a substantial change in job function, which ought to be compensated by a higher salary range.

In order to decide between these respective positions, it is necessary to compare the old and new class standards. These are contained at Appendix "A" (for the old standards) and Appendix "B" (for the new standard).

Clearly, there is a difference in format between the old and the new standards for the Psychometrist class series. Under the old system, there were separate class standards for the Psychometrist 1 and Psychometrist 2 levels, whereas, under the new system, there is one standard encompassing both levels. Moreover, the old standards contained a concise description of duties whereas the new standard is drawn in considerably more detail both with respect to duties and "allocation factors", against which the job is measured.

Apart from these differences in format, the Union claimed that there has been a substantial change in job function as the Psychometrist's function under the old standards was limited to psychological testing. The evidence, however, does not bear out the Union's claim. Both the old and new class standards for the Psychometrist class series cover four main areas: assessment (or testing), treatment, referral (which is referred to at the Psychometrist 2 level only) and research.

As far as the testing function is concerned, there appears to have been little change in job function between the old and the new class standards. Both the old and new standards for Psychometrist 2 refer to the selection, administration, scoring and interpretation of a wide range of psychological tests. Similarly, both the old and new standards for Psychometrist 1 refer to the administration and scoring of psychological tests; the only difference in the standards with respect to Psychometrist 1 is that the new standard also refers to a "limited amount of interpretation within well-established guidelines".

In the area of treatment, both the old and the new standards for the Psychometrist 1 and Psychometrist 2 levels refer to participation in psychotherapeutic and other treatment programmes. In the new standard, there is also a reference to

participation in the development (at both the Psychometrist 1 and Psychometrist 2 levels) and evaluation (at the Psychometrist 2 level only) of psychological treatment programmes.

Within the referral function, the old class standard for Psychometrist 2 referred to making recommendations regarding the referral of clients to other services or agencies. The new standard goes beyond merely making recommendations to cover the actual referral. The referral function is not referred to under the old Psychometrist 1 standard. However, the new standard for Psychometrist 1 refers to making recommendations respecting client referrals (which is basically what was covered under the old class standard for Psychometrist 2).

With respect to the research function, both the old and the new standards for the Psychometrist class series refer to "participation" in psychological research projects. Under the new standard for both Psychometrist 1 and Psychometrist 2, data collection appears to cover such matters as research design and analysis, and interpretation and presentation of research data.

Apart from the four main functions listed above, there are other functions in the new class standard for Psychometrist 2, such as providing information and/or consultation services to

family members and outside agencies and participating in multi-disciplinary teams, conferences and task forces, which were not included within the old standards. However, apart from participation in multi-disciplinary teams, these cannot properly be described as "core functions" of the Psychometrist 2 classification.

It is apparent, therefore, although the main functions of the Psychometrist class series have always been performed, that there has been a change in the level of responsibility and complexity with respect to some of these functions. This change might not have been particularly significant were it not for a change in the degree of autonomy exercised with respect to these functions. Under the old class standard for Psychometrist 1, duties were performed under the "close supervision" of a Psychologist, whereas, under the new standard, although duties are still carried out under "supervision", this is no longer "close supervision". Similarly, under the old class standard for Psychometrist 2, duties were performed under the supervision of a Psychologist; work assignments were "regularly reviewed by the . . . Psychologist who provides professional guidance and establishes the limits of responsibilities assigned". By way of contrast, under the new standard for Psychometrist 2, duties are performed under general supervision; work assignments are accompanied by "general instructions" only; and it is up to the

Psychometrist to determine the most appropriate means of carrying out these assignments. Only if the issues are complex or problems arise is the Supervisor consulted.

In view of the increase in level of complexity in respect of at least some of the core functions and the degree of autonomy exercised by Psychometrists, the Board finds that there has been a substantial, qualitative, change in job content amounting to the establishment of a "new" or "revised" classification within the meaning of Article 5.8 of the collective agreement.

The real issue is the amount of the salary increase to be awarded. The Employer took the position, as it has in previous cases, that there are limitations on the Board's jurisdiction to award a salary increase. In particular, the Employer submitted that the Board's jurisdiction is derived from Article 5.8 of the collective agreement and not from the Crown Employees Collective Bargaining Act and, therefore, that the Board has no jurisdiction, in establishing a salary range, to consider the factors set out in Section 12 of the Act. The Board confirms the view, expressed in the Probation Officers case, that its jurisdiction is derived from the collective agreement rather than from the Act. Accordingly, Section 12 of the Act has no application. However, it may not be inappropriate, in

establishing salary ranges for the jobs in question, to consider factors similar to those in Section 12, such as salaries paid for comparable positions both within and outside the Public Service.

With respect to positions within the Public Service, the Union relied on a comparison with the Psychologist 1 classification. The Union's position was that there is considerable overlap between the Psychometrist 2 and Psychologist 1 classifications; that the supervisory relationship between Psychologist 1 and Psychometrist 2 is "administrative" only; and, therefore, that the substantial wage gap between the two classifications ought to be reduced. The Employer's position, on the other hand, was that there is a significant difference in the degree of complexity and level of responsibility between the Psychometrist 2 and Psychologist 1 classifications; that, by law, Psychometrists must be supervised by Psychologists in the provision of psychological services; and, therefore, that the supervisory relationship is anything but administrative.

In the Board's view, although there is a certain amount of overlap in duties and responsibilities, there is a considerable difference in the degree of complexity and level of responsibility between the Psychometrist 2 and Psychologist 1 classifications. There is also a supervisory relationship between Psychologists and Psychometrists. Although the Union

attempted to characterize this relationship as "administrative", there is nothing in the class standard which supports this view. In fact, the class standards contemplate that Psychometrists will be supervised by Psychologists in the provision of psychological services, which is consistent with the requirements of the Psychologists Registration Act. In the result, we do not find the comparison with the Psychologist 1 classification to be of particular assistance. We also do not find the comparison with the Social Worker and Speech Therapist classifications, suggested by the Employer, to be particularly relevant as there is not sufficient similarity in job function with the Psychometrist classification. Nor is there a factorial analysis for the Social Worker and Speech Therapist classifications which would allow for a proper comparison of job content to be made.

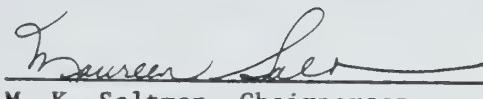
Apart from these comparisons, the Union also relied on comparisons with salaries paid to Psychometrists employed at the Workers' Compensation Board Hospital and in several Ontario public hospitals; and on a comparison with Psychologists (there being no Psychometrist classification) in the Federal Public Service. These comparisons were introduced, it would appear, to suggest that Psychometrists in the Ontario Public Service are underpaid in relation to their counterparts outside the Public Service. Leaving aside the efficacy of the comparisons (and the evidence suggests, for instance, that the comparison with

Psychologists in the Federal Public Service may not be particularly apt as a masters degree is required for even the Psychologist 1 level), the relevant salary comparisons for the purposes of Article 5.8 are those which relate to a change in job function and not those relating to a salary differential which may have been in existence even prior to the change. Article 5.8 of the collective agreement contains a mechanism for establishing a salary range for a new or revised classification. It is not intended to address historical wage disparities which have existed for many years and which are independent of any change in job function. This is not to say that salary comparisons outside the Ontario Public Service (or even within the Public Service) should be ignored but only that they should be scrutinized with some degree of care.

In this case, the Board is of the view that there has been a substantial change in job function (particularly relating to a change in supervision) and that employees who come within the Psychometrist class series are entitled to an increase in salary range. Taking into account all of the available evidence, the Board awards an increase of 4.5% for both the Psychometrist 1 and Psychometrist 2 class standards. This change shall be effective from December 1, 1985, as proposed by the Employer, which is the first day of the month in which the class standards were submitted for approval by the Civil Service Commission.

Although the Union suggested an earlier date because of the delay in finalizing the class standards, the date of approval of the class standards has been accepted in other cases as the effective date for retroactive increases under Article 5.8 of the collective agreement: see, e.g., Re Ontario Public Service Employees Union (Union Grievance) and The Crown in right of Ontario (Ministry of Transportation and Communications), February 7, 1986 (Roberts (unreported)). The Board will remain seized in the event that difficulties arise in the application of this award.

DATED AT TORONTO, this 11th day of April, 1989.



M. K. Saltman, Chairperson

"Larry Robbins" - See attached addendum
L. Robbins, Member

See attached dissent

I. Cowan, Member

APPENDIX "A"

CATEGORY: Scientific and Professional Services
GROUP: SP-09 Psychology
SERIES: Psychometrist
CLASS CODE: 09370 to 09372

PREAMBLEPSYCHOMETRIST CLASS SERIES

The duties of positions allocated to this series are carried out by Psychometrists under the professional supervision of a Psychologist. Duties include the collection of test data on individuals or groups of patients or inmates as part of an overall programme of psychological service, either for psychiatric treatment or rehabilitation and reform purposes. Typically, the administration of psychological tests such as: intelligence (Wechsler and Binet tests); vocational (Differential Aptitude tests); personality (Minnesota Multiphasic Personality Inventory and the Rorschach technique) is included. Assistance to psychologists in gathering and processing data for research studies and in training non-professional staff may also be included.

EXCLUSIONS:

Positions where similar qualifications and experience are required or desirable, but where the duties performed are not directly related to professional psychological work in a medical or reform institution setting, are excluded from this series.

CATEGORY: Scientific and Professional Services
GROUP: SP-09 Psychology
SERIES: Psychometrist
CLASS CODE: 09370/09371

PSYCHOMETRIST 1 (3 YEAR B.A.)
(HONOURS B.A.)

CLASS DEFINITION:

Incumbents of positions allocated to this class assist professional psychologists by administering and scoring a variety of psychological tests or in research studies. The duties are of a routine nature and are performed under close supervision by a psychologist in an Ontario Hospital, Mental Health Clinic or Correctional Institution.

These employees assist with and participate in the administration, scoring and tabulation of intelligence, personality and aptitude tests. Under supervision, they participate in psychotherapeutic and activity programmes of an individual or group nature. They perform record keeping and other clerical duties related to psychological treatment. They may assist with and participate in the application of research techniques, the tabulation of data and the preparation of reports.

QUALIFICATIONS:

1. Honours degree from a university of recognized standing in psychology or in an allied discipline such as sociology or anthropology.
2. Preferably some previous related experience.
3. Personal suitability; ability to establish harmonious working relationships with professional personnel and patients, students or inmates.

Revised July, 1965

CATEGORY: Scientific and Professional Services
GROUP: SP-09 Psychology
SERIES: Psychometrist
CLASS CODE: 09372

CLASS STANDARD:

PSYCHOMETRIST 2 (MASTERS)

Incumbents of positions allocated to this class, under the supervision of a psychologist, in an Ontario Hospital, Mental Health Clinic or Correctional Institution, assist in identifying emotional maladjustments, behaviour patterns and the mental level of patients, students or inmates by administering, scoring and interpreting a variety of intelligence, personality, academic, occupational and aptitude tests. Work assignments are regularly reviewed by the supervising psychologist who provides professional guidance and establishes the limits of responsibilities assigned. These employees may make recommendations on the treatment, training and placement of patients, students or inmates, subject to approval by the supervising psychologist. They prepare reports, incorporating their test findings, which assist in the diagnostic and therapeutic decisions of psychologists, or psychiatrists. Similarly, they may participate in the collecting and processing of research data.

These employees interview patients, students or inmates and establish the test procedures to be used. They administer, score and interpret tests of intelligence, aptitude and personality such as Wechsler, Binet, Differential Aptitude, Minnesota Multiphasic Personality Inventory and Rorschach techniques.

Under supervision, they participate in psychotherapeutic and activity programmes of an individual or group nature; assist in the application of research techniques and in the training of non-professional staff.

QUALIFICATIONS:

1. Graduation from a University of recognized standing and a Master's degree in Psychology.

2. Preferably some previous related experience.
3. Personal suitability, ability to establish harmonious working relationships with professional personnel patients, students and inmates.

July 1965

APPENDIX "B"

Category	Group	PREAMBLE
SCIENTIFIC AND PROFESSIONAL SERVICES	SP-09 PSYCHOLOGY	
Series		Class Code
PSYCHOMETRIST		

PSYCHOMETRIST 1 - 2

This series covers positions of employees who participate in an overall program of psychological services by carrying out a range of activities and assignments related to psychological assessment, treatment, referral and research. They usually work under the professional supervision of a registered psychologist, as required under law, but may, in certain settings, be supervised by another health care professional. These psychological services are provided to individuals and groups in a variety of settings, such as: observation and detention homes, psychiatric hospitals, mental retardation facilities, childrens' mental health centres, correctional centres, jails, schools for the blind and deaf. The role of the psychometrist is distinct from other related disciplines in the essentially scientific approach taken towards assessment, treatment and research.

Typical duties of positions in this series include a range of the following:

- selecting, administering, interpreting, and reporting on a variety of psychological tests such as tests of intelligence, vocational, aptitude, personality, educational achievement and neuropsychology;
- participating in the psychological assessment and diagnosis of client dysfunctioning;
- participating in the development and implementation of psychotherapeutic treatment/rehabilitation plans, e.g., behaviour modification, home management skills training, crisis intervention, individual/group therapy;

- participating in the development, implementation and evaluation of patient treatment programs;
- providing related consultation services to other departments in the facility, community agencies, parents, schools;
- participating in the presentation of educational programs to other staff in the facility;
- liaising with and making client referrals to agencies and services both within ministries and in the community;
- participating in psychological research projects;
- participating in multidisciplinary teams, committees, task forces.

The skills and knowledge required to perform these duties are normally obtained through successful completion of a formal academic program involving specialization in the field of psychology, with emphasis on the application of psychological theories, methods and practices relevant to the assessment and treatment of psychological disorders and emotional/mental handicaps.

Explanation of Terms:

Relevant psychological theories, methods and practices - for example, personality theory, social psychology, abnormal psychology, psychometric theory, individual and group psychotherapy, crisis intervention, behaviour modification therapy, applied learning theory, perception, motivation, cognition, statistics, research design, experimental psychology, basic psychological and brain functioning.

Psychological Assessment - refers to the methods and techniques employed to determine the mental, emotional, behavioural, and/or social level of functioning, including the identification of abilities, impairments, disorders and other related aspects of functioning.

Psychological tests - refers to the instruments used in assessment and includes objective tests such as M.M.P.I., Wechsler, 16pf; projective tests such as T.A.T. and Rorschach; and specialized tests such as neuropsychological. Tests may be standardized to the extent where there is a fixed range of responses to choose from, and an established method of eliciting, recording and scoring responses, or, tests may be open-ended and subjective, that is, requiring considerable judgement in administering, recording, scoring and interpreting.

Treatment plan - refers to a structured plan which describes a program of therapeutic activities designed to meet individual treatment and rehabilitation needs.

Allocation Criteria

The following criteria are used to differentiate levels of work:

Knowledge and Skills

- The extent of the requirement for knowledge of:
 - psychological theories, methods and practices, including application of this knowledge;
 - psychological testing;
 - research methodology;
 - facility programs, policies and services;
 - community agencies and resources;

- the level of oral and written communication skills.

Professional Responsibility

Within the legal requirement for supervision by a registered psychologist, and frequently in a multidisciplinary team setting where work assignments are co-ordinated by a team leader, responsibility is defined by:

- nature of supervision and work assignments in terms of the extent to which specific guidelines are available and judgement/decision-making is required;
- extent and nature of professional activity in the areas of assessment, treatment, referral and research;
- the requirement for providing consultation/technical guidance to other facility staff and community agencies;
- detection and impact of errors.

Contacts

The frequency and nature of internal and external contacts.

Levels

There are two levels of work, as follows:

Level 1

Positions of employees who participate in an overall program of psychological services by carrying out standardized activities and assignments related to psychological assessment, counselling, and data collection for research purposes.

Level 2

Positions of employees who participate in an overall program of psychological services, either by carrying out a full range of both standardized and more complex activities and assignments related to psychological assessment, therapy, consultation, referral and research, or by carrying out a range of research activities on a full-time basis.

PSYCHOMETRIST 1

This class covers positions of employees who participate in an overall program of psychological services in provincial facilities and institutions by carrying out standardized activities and assignments related to psychological assessment and counselling; positions at this level may also participate in research by carrying out activities related to the collection and compilation of data.

Knowledge and Skills

Work requires:

- basic knowledge of relevant psychological theories, methods, practices - familiarity with fundamental principles and theories and the ability to apply these to a limited range of treatment activities such as supportive counselling, behaviour modification, life skills training;
- knowledge of routine standardized psychological tests and the ability to administer/score these for a variety of client groups;
- knowledge of data gathering techniques to assist in data collection for psychological research projects;
- familiarity with other programs/services in the facility, as well as community resources and agencies;
- oral and written communication skills to maintain effective relationships with clients, families and staff, and to prepare written assessment reports.

Professional Responsibility:

- under supervision, and frequently within a multidisciplinary team setting, there is limited latitude for decision-making as tasks are well-defined, are accompanied by specific instructions and fall within established guidelines and procedures;

Work requires:

- the administration and scoring of specified standardized tests, including intelligence, vocational, aptitude and personality; limited interpretation within well-established parameters and norms;
- participation in establishing and implementing treatment plans and programs;
- making recommendations to the psychologist regarding the referral of clients to other departments/services/programs within the facility and to outside agencies;
- limited participation in psychological research, e.g. routine collection and compilation of research data;
- all assessments are referred to and discussed with a psychologist; errors are normally detected and corrected through ongoing supervision, but may result in minor inconvenience to the client and staff, or adjustments to the individual treatment plan.

Contacts

- frequent contact with clients in relation to assessment, treatment and/or research;
- limited contact with families, community agency staff, and other facility/ministry staff, to exchange client and program information and to recommend client referrals.

PSYCHOMETRIST 2

This class covers positions of employees who participate in an overall program of psychological services, either by carrying out a full range of both standardized and more complex activities and assignments related to psychological assessment, therapy, consultation/referral, and, as required, research assistance, or by carrying out a range of research activities, including data collection, compilation, analysis, interpretation and presentation, on a full-time basis.

Knowledge and Skills

Work requires:

- broad knowledge of relevant psychological theories, methods and practices - demonstrated understanding of fundamental principles, theories, and alternative explanations/hypotheses available in diagnosis and treatment; the ability to apply this knowledge to a range of treatment activities such as counselling, interviewing, individual/group/family therapy and other psychotherapeutic techniques;
- working knowledge of a wide range of objective, projective and specialized tests, and the ability to select, administer, score and interpret these;
- knowledge of research methodology to undertake specific aspects of research projects, including research design, data collection, analysis, presentation and report preparation;
- good understanding of related facility programs, activities, policies and services, as well as available community agencies and resources;
- excellent oral and written communication skills to prepare reports, papers, and training materials, to provide guidance to other staff/students and to present related training courses.

Note: Full-time research positions alternatively required a good knowledge of statistics, research design, computer applications and analysis, experimental psychology and the

ability to operate psychological research equipment.

Professional Responsibility:

- under general supervision, and frequently within a multidisciplinary team setting, work assignments/assessment referrals are accompanied by general instructions only, e.g. general nature of the problem to be investigated; they require the exercise of judgement in determining the most appropriate methods to use, in interpreting results, and in formulating/following-up recommendations.

Work requires:

- the selection, administration and scoring of a range of objective and projective psychological tests, and interpretation within broadly based guidelines;
- the development, implementation, monitoring and revision of therapeutic treatment/rehabilitation plans, including providing individual/group/family therapy, and aversion, play and drug therapies; assisting in the development, implementation and evaluation of related programs;
- making direct referrals of clients to other departments, services and/or programs within the facility, and to outside agencies;
- participation in the design, collection, analysis and presentation stages of research;
- providing information/consultation services to schools, parents, professional associations, agencies and community groups, including providing training in special treatment procedures;
- providing technical direction to less experienced staff and, as required, to students on placement;
- complex issues and problematic assessments are discussed with a psychologist or another health care professional; errors in judgement are usually identified through supervision or multidisciplinary team meetings, but could result in impeding client rehabilitation, developmental damage or harm to the client,

disruption of ward activities and programs,
criticism of facility/ministry programs,
misuse of agency resources.

Contacts

- frequent and ongoing contact with clients in relation to assessment, development and implementation of treatment plans;
- frequent consultation with other disciplines to discuss the treatment and progress of clients;
- regular contact with families to obtain information or provide related counselling/advice; with staff of community agencies to make referrals, provide consultation/assessment services, assist in establishing or developing programs;
- some positions have contacts with court workers, police and lawyers to exchange client information; in research settings, contacts include universities, general hospitals, and research centres, to exchange research information.

IN THE MATTER OF AN ARBITRATION

BETWEEN: CROWN IN RIGHT OF ONTARIO (MANAGEMENT BOARD OF CABINET)
[SCIENTIFIC & PROFESSIONAL WAGE CATEGORY]

- and -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

AND IN THE MATTER OF THE GRIEVANCE OF REVISED WAGE RATES FOR
PSYCHOMETRISTS

A D D E N D U M

I have reviewed the Award of the Chairman in this matter. I concur that there has been a substantial change in the job function of psychometrists, and that employees are entitled to an increase in salary range. Nevertheless, I feel that the Award understates the extent of the change to some degree.

In my view, under the old class standards, the primary emphasis was on the testing function. Under the new standards, the Psychometrists play a significant role in the areas of counselling, referral, and research, as well as testing. Moreover, the Psychometrists' responsibilities within these areas go well beyond simply participating within well-defined programs that have been developed by someone else. Their role in developing treatment programs, and in research design both represent significant changes. I would also concur that the change in supervision is a significant component of the changes that have occurred which warrant an increase in salary.

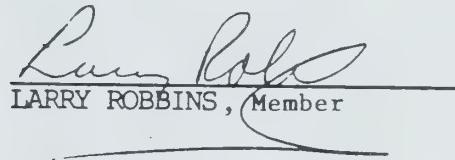
Based on all of these factors, I would have awarded an increase of 6.5%.

On the question of the Board's jurisdiction, I would agree that the Board is free to consider factors such as those in Section 12 of the Crown Employees Collective Bargaining Act. However, I prefer the Union's position that we are a Board acting in accordance with the provisions of the Act. That is not to say that we are not also governed by Article 5.8 of the collective agreement. But the Parties have clearly used the provisions of C.E.C.B.A. to establish an ad hoc

Board of Arbitration. We are not a panel of the Grievance Settlement Board set up in accordance with Article 27. Therefore, when Article 5.8 refers to "Arbitration", in my view, the provisions governing such an arbitration are those of the Act which are applicable, including Section 12.

Nevertheless, the ultimate exercise of the board may turn out to be the same in any event.

Dated at Toronto, Ontario this 11th day of April, 1989.


LARRY ROBBINS, Member

DISSENT

Having carefully read the Chairman's decision in the above matter I must, with respect, disagree with the statement at page 11 to the effect that "there has been a substantial change in job function".

It is my view that the changes are more related to the manner in which the revised class standards have been written than to any substantive change in job function.

For this reason I would have awarded an increase of 1% for both Psychometrist 1 and Psychometrist 2 to recognize a changed supervisory control relationship.

"Ian J. Cowan"

Ian Cowan, Member

T/0039/87-2

IN THE MATTER OF AN ARBITRATION

T/0039/87

BETWEEN:

THE CROWN IN RIGHT OF ONTARIO
("The Employer")

AND

ONTARIO PUBLIC SERVICE EMPLOYEES
UNION
("The Union")

AND IN THE MATTER OF THE ESTABLISHMENT OF SALARY RANGES FOR THE
PSYCHOMETRIST CLASS SERIES

BOARD OF ARBITRATION:

MAUREEN K. SALTMAN, CHAIRMAN
IAN J. COWAN, EMPLOYER NOMINEE
LARRY ROBBINS, UNION NOMINEE

APPEARANCES:

FOR THE EMPLOYER: MAUREEN FARSON, COUNSEL

FOR THE UNION: JOANNE MIKO, REPRESENTATIVE

SUPPLEMENTARY AWARD

This case involves a claim for a new salary range for Psychometrists. The claim is made under Article 5.8 of the collective agreement, which reads as follows:

"When a new classification is to be created or an existing classification is to be revised, at the request of either party, the parties shall meet within thirty (30) days to negotiate the salary range for the new or revised classification, provided that should no agreement be reached between the parties, then the Employer will set the salary range for the new or revised classification subject to the right of the parties to have the rate determined by arbitration."

A hearing was scheduled in this matter and the Board issued its award on April 11, 1989. In that award, the Board found that there had been "a substantial change in job function ... and that employees who come within the Psychometrist class series are entitled to an increase in salary range" (p. 11). As a result, the Board awarded an increase of 4.5% for both the Psychometrist 1 and Psychometrist 2 class standards effective from December 1, 1985. In accordance with the usual practice in matters of this sort, the Board retained jurisdiction to deal with any difficulties that might arise in the application of its award.

Subsequently, the Board was advised that difficulties had arisen in the application of its award. At the request of the parties, the hearing was reconvened to deal with these matters.

At the outset of the hearing, the Board was advised that difficulties had arisen in the implementation of the 4.5% increase in salary range awarded by the Board. The nature of the difficulty arises, at least in part, from a restructuring of the Psychometrist class series which took place in May, 1988. Prior to the restructuring, there were three levels in the Psychometrist class series: Psychometrist 1 (3-year B.A.), Psychometrist 1 (Honours B.A.) and Psychometrist 2. As a result of the restructuring, the Psychometrist 1 levels were combined and a single class standard was developed to cover both the Psychometrist 1 and Psychometrist 2 levels. Moreover, the salary ranges were compressed from 7 steps to 5 steps for the Psychometrist 1 level and from 6 steps to 5 steps for the Psychometrist 2 level. As part of the implementation of these new salary ranges, the Employer placed employees on the compressed salary grids in accordance with an internal management policy.

Following issuance of the Board's award, the Employer increased the compressed grids for both the Psychometrist 1 and Psychometrist 2 levels by 4.5% and in accordance with its internal management policy purported to place employees at the lowest step on the increased salary grid which would provide them with an increase. As a result of placement on the new salary grid, some employees received less than a 4.5% increase. The Union, however, took the position that the Employer was required to place employees

on the salary grid so as to ensure them an increase of at least 4.5%.

It was the submission of the Employer, however, that the Board has no jurisdiction in this matter as the issue which is raised is not a matter of implementation but of initial placement on the salary grid. It was the submission of the Union, on the other hand, that the Board has jurisdiction to ensure that its award is implemented, which may include reviewing the placement of employees on the salary grid.

There was no dispute as to the Board's jurisdiction to make an award under Article 5(8) or to deal with matters of implementation of that award. The real dispute is whether the issue raised is a matter of implementation. In our view, the Board is entitled, in dealing with implementation, to ensure that employees are not denied the benefit of the Board's award which may, in some circumstances, include reviewing the manner in which employees are placed on the salary grid. Such is the issue in this case and, therefore, the Board asserts jurisdiction to deal with

the matter. The hearing will be reconvened on its merits.

DATED AT TORONTO, this 2nd day of March, 1990.

Maureen Alex
Chairman

"Ian J. Cowan"
Employer Nominee

"Larry Robbins"
Union Nominee



Ontario Public Service
Labour
Relations
Tribunal

Fonction Publique de l'Ontario
Tribunal Administratif
des Relations
du Travail

180 Dundas Street West, Suite 2100, Toronto, Ontario M5G 1Z8

416/598-0688

T/0050/87

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between: The Crown in Right of Ontario Employer

- and -

Ontario Public Service Employees Union Union

Before: M.K. Saltman Chairperson
L. Robbins Member
I.J. Cowan Member

For the Employer: Rick Itenson
Staff Relations Officer
Staff Relations Branch
Human Resources Secretariat

For the Union: Andre Bekerman
Senior Negotiator
Ontario Public Service
Employees Union

Joanne Miko
Negotiator
Ontario Public Service
Employees Union

Hearing: October 13, 1988

A W A R D

This arbitration concerns the establishment of salary ranges for the Probation Officer ("PO") class series. The Probation Officer class series covers positions in the Ministries of Correctional Services and Community and Social Services which provide probation and parole services to adult and young offenders throughout the Province of Ontario.

A two-level Probation Officer class series came into effect in the 1940's. At that time, probation services were shared with the local municipalities. In the early 1960's, probation services came within the exclusive jurisdiction of the Province. At approximately the same time, the Probation Officer class series was expanded to include the PO 3 level covering supervisory and senior specialist functions and the PO 4 level covering Regional Supervisors. This structure remained unchanged until 1981 when the PO 4 level was deleted from the Probation Officer series and positions formerly classified at this level were transferred to management. At about the same time as the PO 4 level was deleted, the PO 3 level became vacant (with the functions formerly performed at this level being transferred to the newly-created Area Manager position). The PO 3 level remained in existence, however, until August 4, 1987, at which time it was also deleted.

Although the evidence does not establish when the class standards for the Probation Officer series first came into effect, there was a revision of the class standards in 1964. No action was taken to revise these standards until 1981 when, according to the Employer, a standards review was undertaken. That review was never completed.

In December, 1983, some 100 grievances were filed by Probation Officers claimed that they were improperly classified as PO 2's and requesting reclassification as PO 3's. The grievances came before a panel of the Grievance Settlement Board chaired by Vice-Chairman Gregory Brandt. At the outset of the hearings, it was agreed that the Union would proceed with six of the grievances; that the Board would issue an award on the six grievances; and that the parties would attempt to negotiate a settlement with respect to the other 94 grievances based on the Board's award. In the event that a settlement could not be reached, the Board retained jurisdiction to deal with the outstanding grievances. On October 19, 1986, the Board issued its award on the six grievances: see Angus et al., G.S.B. 203/84. The Board concluded (1) that the PO 2 class standard did not adequately reflect the nature of the work performed by the grievors; and (2) that the work was also not covered under the PO 3 standard. In support of its conclusion that the work performed by the grievors was not comprehended by the PO 2 class standard, the Board relied on the following factors:

- (1) the manner in which cases were assigned to individual Officers. The PO 2 class standard then in effect contemplated that cases would be assigned by the Courts to individual Probation Officers. As a matter of practice, however, the referral was made to a particular probation office and it was up to the Probation Officers in that office (either a single Probation Officer designated as "Duty Officer" or a team of Probation Officers) to assign the cases among themselves. The Board concluded that, as a result of this practice, Probation Officers had greater responsibility than when cases were assigned by the Courts directly to individual Officers;
- (2) the involvement with volunteers and community agencies. Under the class standard, the Probation Officer was responsible for providing service directly to the probationer and for ensuring that the terms of the probation order were met. In practice, however, volunteers and community agencies were utilized to provide service to probationers although the Probation Officer assigned to the case was ultimately responsible for it;

- (3) significant involvement by some of the grievors in the initiation, design and implementation of projects involving volunteers and community agencies which, the Board found, went well beyond the simple delivery of probation services contemplated by the class standard; and
- (4) the changed organizational framework or reporting relationship within which the grievors performed their jobs. Although the class standard contemplated general supervision of the Probation Officer by a PO 3, the PO 3 level had been deleted. With that level of supervision removed, what remained was supervision by the Area Manager. However, the Board found that contact with the Area Managers was infrequent and tended to concern reporting on general issues of Ministerial policy or approval of budget matters. In reality, in terms of carrying out their duties and responsibilities, the Board found that the PO 2's were unsupervised.

By way of remedy, the Board directed the Employer to classify the employees properly having regard to their duties.

In August, 1987, the Employer created a new class standard for the PO class series. The revised standard was approved by the Civil Service Commission on July 29, 1987 and agreed to by the Union in or around January, 1988. The revised class standard for the PO class series is set out in Appendix "A". For comparative purposes, the old class standards for the PO 1 and PO 2 levels are set out at Appendices "B" and "C", respectively.

Notwithstanding agreement on the content of the class standard, the parties could not agree on a salary range for the revised standard. Accordingly, they referred their salary dispute to this Board for determination under Article 5.8 of the collective agreement, which reads as follows:

- "5.8 When a new classification is to be created or an existing classification is to be revised, at the request of either party the parties shall meet within thirty (30) days to negotiate the salary range for the new or revised classification, provided that should no agreement be reached between the parties, then the Employer will set the salary range for the new or revised classification subject to the right of the parties to have the rate determined by arbitration."

Article 5.8 provides, when a new classification has been created or an existing classification has been revised, that the parties

will meet within 30 days in an attempt to agree on a salary range for the new or revised classification. If agreement is not reached, the Employer will establish the salary range unilaterally and the Union can have the matter determined at arbitration.

It seems clear that, in order to warrant an increase in salary range under Article 5.8, there must be a "new" or "revised" classification within the meaning of the Article. It has been held that, in order to constitute a revised job classification, there must be a substantial change in job content: see, e.g. Re Nurses' Association Joseph Brant Memorial Hospital and Joseph Brant Memorial Hospital (1972), 24 L.A.C. 104 (Hinnegan). However, it is not every change in job content, but only a substantial or significant change, that is compensable under Article 5.8.

In this case, the Employer took the position, notwithstanding the change in format of the class standard (from the old "grade description" to the current "factorial" format), that there has been no substantial change in job content and, therefore, that there is no basis for an increase in salary range for the PO class series. For its part, the Union took the position that there has been a substantial change in job content, which justifies a higher salary range.

There is no doubt a difference in format between the old and new class standards for the PO series. Whereas previously there were separate class standards for each of the PO 1 and PO 2 levels, there is now one class standard encompassing both levels. Moreover, whereas the old class standards described the job function solely in terms of the actual duties performed, the revised standard includes not only a list of duties but a factorial analysis, which describes the job function on the basis of certain "allocation factors", namely, "skills and knowledge", "judgement" and "accountability". However, it is not the difference in format, but the difference in job content (which includes duties and responsibilities as well as the factors set out above), which distinguishes the old and new class standards. One obvious difference is that under the old class standards, supervision is provided to probationers whereas under the new standard, parolees as well as probationers are covered. More important, however, is the nature of the supervision. The old PO 2 class standard portrays the Probation Officer providing service to clients on a one-to-one basis whereas the new standard goes beyond the provision of service to individual clients to include the supervision of outside agencies and volunteers in the provision of this service. More particularly, the old standard for PO 2 refers to (1) the supervision of individual probationers in order to ensure compliance with the terms and conditions of the probation order; (2) enforcement of the probation order, in

order to ensure that appropriate action is taken with respect to violation or defaults; and (3) preparation of documentation for use by the Courts and correctional staff. There was also reference to certain public functions, such as serving as an ex officio provincial police constable, serving as clerk of Juvenile and Family Court and escorting probationers in custody to detention institutions, as well as carrying out matrimonial counselling, which are no longer performed.

With the exception of these obsolete functions, the new PO 2 class standard covers much of what was contained in the old standard with respect to the provision of service directly to probationers (although, in the new standard, parolees are also covered). In addition, the new PO 2 standard includes duties and responsibilities relating to (1) the supervision of outside agencies and volunteers in the provision of this service; (2) the evaluation of the service provided by these outside agencies and volunteers; (3) the development of programmes to provide additional service to clients; (4) the identification of areas in which the service provided is inadequate; and (5) the representation of probation and parole services in the public forum. These duties are dealt with more fully in the class standard as follows:

- acting as broker in the placement of youths within open custody facilities, foster and group homes;

- providing case management services for young offenders in custody and probationers in community placements;
- providing case management services for offenders assigned to community service, victim-offender reconciliation, restitution, compensation, native and volunteer programs and other recognized pre and post dispositional programs;
- participating as a team member reviewing the provision of services;
- providing court and institutional liaison functions in order to facilitate the smooth flow of information between the courts, institutions and the community;
- assisting in the establishment and review of contracted and fee-for-service programs, and in maintaining liaison with the various agencies;
- developing and operating in-house programs such as Community Service Order programs, volunteer programs, camping programs, attendance centres;
- participating on and providing input to a variety of internal and/or external committees and task forces on an ad hoc basis;
- assisting in identifying trends, service gaps or inadequate services as occurrences arise in areas such as child abuse, substance abuse, sexual offences and mental health;
- establishing contacts, and assisting in the development and implementation of new programs or in the promotion of integrated service networks within communities;
- providing leadership, orientation, training and advice to volunteer staff including the identification of roles, responsibilities, and expectations and assessing performance;
- representing Probation and/or Parole services in the public forum.

In the Board's view, the duties and responsibilities in the new class standard for PO 2, while encompassing the majority of duties in the old standard, go well beyond the scope of these duties. Moreover, it would appear that the duties which were deleted, such as serving as an ex officio provincial police constable and serving as Clerk of the Juvenile and Family Court, are of a relatively minor nature whereas the duties which were added, involving, as they do, the initiation, evaluation and supervision of outside agencies and volunteers in the provision of service to clients, are far more significant.

Apart from the change in duties and responsibilities, there are other elements of the revised class standard (referred to as "allocation factors") which reflect the role of the Probationer Officer in supervising volunteers and community agencies. For instance, under the skill and knowledge factor, the Probation Officer is expected to have an in-depth knowledge and understanding of community service organizations and agencies sufficient to co-ordinate services for clients, to identify service gaps and to make alternate arrangements, where necessary, for the provision of service to clients, as well as sufficient administrative skills to set priorities and manage a caseload. There appears to be no dispute that these additional skills represent a change in job content from the old class standard.

There was some dispute, however, with respect to the other allocation factors, i.e., judgement and accountability. As none of these factors is set out on the face of the old class standards, it is necessary to extrapolate them from the class descriptions. Nevertheless, even extrapolating these factors, we find that there are elements of judgement and accountability, associated with the provision of advice and supervision to community agencies and volunteers, which are not comprehended in the old class standards.

In light of the changes to the PO 2 class standard, both in duties and responsibilities and in the allocation factors set out therein, the Board finds that there has been a substantial, qualitative change in job content amounting to the establishment of a new or revised classification within the meaning of Article 5.8 of the collective agreement.

The PO 1 level is the entry or training level for the PO class series. To the extent, therefore, that there has been a change in job content for the PO 2 class standard, the PO 1 standard has changed as well. Accordingly, any increase in salary range which is awarded for the PO 2 level must apply to the PO 1 level as well.

The real difficulty in this case is assessing the amount of the increase. The Employer claimed that there were certain

limitations on the Board's jurisdiction to award a salary increase. It should be noted that no objection was taken with respect to the Board's jurisdiction to hear this matter but only as to whether the Board was constituted under the Act or under the collective agreement. In this regard, the Union took the position that the Board's jurisdiction is derived from Sections 10 and 11 of the Act and, therefore, that we are entitled to consider the factors in Section 12 in determining the appropriate salary range for the PO class series. The Employer, on the other hand, took the position that our jurisdiction is derived from Article 5.8 of the collective agreement and, therefore, the factors in Section 12 have no application.

In our view, our jurisdiction is derived from the collective agreement rather than from the Act. Sections 10 and 11 of the Act come into play when notice to bargain has been given under Section 8 or 22 and the parties have been unable to conclude a collective agreement. In this case, there is a collective agreement in place and so the provisions of Sections 10 and 11 and of Section 12, which defines the jurisdiction of a board of arbitration constituted under Sections 10 and 11, have no application. Rather, the matter arises under Article 5.8 of the collective agreement, which provides for the establishment of a salary range for a new or revised classification. Nevertheless, in establishing the salary range, it would not be

inappropriate to consider factors similar to those set out in Section 12, such as salaries paid for comparable positions both within and outside the Public Service.

In this regard, the Board was asked to compare the Probation Officer class standards with the class standards for Rehabilitation Officer, Correctional Services, for Rehabilitation Officer, Health, and for Social Worker. Based on the evidence tendered, such a comparison is difficult to make. The class standards for the Rehabilitation Officer and Social Worker class series are some 18 to 25 years old and are not particularly enlightening as to the job content of these classifications. But, in any event, even based on these class standards, the Rehabilitation Officer classifications do not appear to go beyond the provision of service to individual clients, which the revised Probation Officer class series does. Nor do Rehabilitation Officers have an enforcement function, which is an important component of the Probation Officer's job. Although the Social Worker classification appears to have some role beyond the provision of service to individual clients, Social Workers also have no enforcement functions. For these reasons, the Board is not persuaded by the comparisons suggested by the Employer.

Nor is the Board persuaded by the Union's salary proposal. The Union's proposal was for an increase to the salary

ranges of 13.3%, which represents 3/4 of the amount of the differential between the maximum rates for the PO 2 and PO 3 levels. The Employer objected to any consideration of the salary range for the PO 3 level, which has been deleted. In our view, even though there has been a substantial change in job content, an increase of 13.3% is excessive. Nevertheless, as the change has been significant, an increase of 1% or 2% would not suffice. Taking into account all of the factors set out herein, an increase of 6% in the salary ranges for both PO 1 and PO 2 levels is, therefore, awarded. By agreement of the parties, this increase will be effective from July 29, 1987, which is the date of the submission, as well as the approval, of the revised class standard to the Civil Service Commission. Although the Union requested additional retroactivity for those employees whose grievances were consolidated under the Angus case, in our view, this matter is properly within the jurisdiction of the Grievance Settlement Board to which those grievances were referred. However, in light of the length of time that has passed since the filing of these grievances, we would urge the parties to attempt to settle the issue of retroactivity for these employees between themselves. Should they be unable to do so, however, the matter would have to be determined by the Grievance Settlement Board.

In summary, the Board finds that there has been a substantial, qualitative change in job content for the PO class series sufficient to constitute a new or revised classification

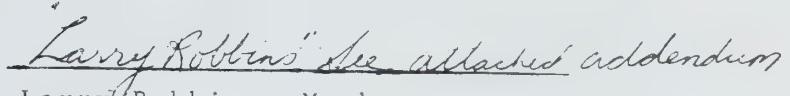
within the meaning of Article 5.8 of the collective agreement.

By way of remedy, the Board awards an increase in the salary range for the PO class series in the amount of 6¢ effective July 29, 1987. The Board will remain seized in the event that difficulties arise in the application of this award.

DATED AT TORONTO, this 13 day of March , 1989.



Maureen Saltman, Chairperson



Larry Robbins see attached addendum

Larry Robbins, Member



Ian J. Cowan

Ian J. Cowan, Member

APPENDIX "A"

Category	Group	PREAMBLE
ADMINISTRATIVE SERVICES	AD-09 SOCIAL PROGRAMS	
Series		Class Code
PROBATION OFFICER		10170 TO 10172

PROBATION OFFICER 1 - 2

The Probation Officer series covers positions of employees who provide case management, casework and enforcement services for adult and young offenders. These employees are primarily responsible for providing probation and/or parole services to adult and young offenders, the courts and other parts of the criminal justice system.

Responsibilities typically include:

- conducting community investigations to obtain and assess information concerning the offender's personal, family, social, educational and employment background, emotional and health problems and/or needs;
- conferring with families, social and community agencies, doctors, teachers, lawyers, psychiatrists, schools, police, employers and victims;
- preparing histories and reports, e.g. pre-sentence, pre-disposition, progress, which may include recommendations for judges to use as an aid to sentencing, or for the parole and custody review boards for their deliberations;
- attending at court to present evidence and reports in relation to assigned clients;
- developing supervision plans and/or plans of care to manage cases and to assist authorities administering the disposition or sentence;

- supervising probationers as ordered by the courts, and parolees on behalf of the Ontario Board of Parole, and maintaining required case documentation and statistics;
- providing casework services by establishing relationships with offenders and offering them advice, counselling and assistance related to their social adjustment, personal and family problems, employment and school opportunities;
- enforcing terms of probation and other court orders, conditions of parole, conditions of temporary release, and conditional releases; reporting cases of violation or default and recommending and/or instituting corrective action;
- acting as broker in the placement of youths within open custody facilities, foster and group homes;
- providing case management services for young offenders in custody and probationers in community placements;
- providing case management services for offenders assigned to community service, victim-offender reconciliation, restitution, compensation, native and volunteer programs and other recognized pre and post dispositional programs;
- participating as a team member reviewing the provision of services;
- providing court and institutional liaison functions in order to facilitate the smooth flow of information between the courts, institutions and the community;
- assisting in the establishment and review of contracted and fee-for-service programs, and in maintaining liaison with the various agencies;
- developing and operating in-house programs such as Community Service Order programs, volunteer programs, camping programs, attendance centres;
- participating on and providing input to a variety of internal and/or external committees and task forces on an ad hoc basis;
- assisting in identifying trends, service gaps or inadequate services as occurrences arise in areas such as child abuse, substance abuse, sexual offences and mental health;

- establishing contacts, and assisting in the development and implementation of new programs or in the promotion of integrated service networks within communities;
- providing leadership, orientation, training and advice to volunteer staff including the identification of roles, responsibilities, and expectations and assessing performance;
- representing Probation and/or Parole services in the public forum.

Work in this series requires knowledge in the social and/or behavioural sciences in such areas as:

- human growth and development;
- deviance/criminality/delinquency;
- interpersonal behavioural strategies for change;
- family functioning;
- community development;
- the justice system;
- law and its applications;
- administration of bureaucracies and organizations.

Definition of Terms:

Case Management

is the assigned responsibility of a Probation Officer to co-ordinate and/or provide all relevant services to an offender in order to ensure compliance with court orders and/or with releasing authority certificates, maximize opportunities for offender rehabilitation, and contribute to the protection of society.

Casework

is the responsibility of a Probation Officer to provide direct assessment and counselling services to offenders individually or in groups, through the application of accepted social work principles, interview techniques and intervention strategies.

Enforcement

is the responsibility of a Probation Officer to take appropriate corrective action when offenders fail to comply with court orders and/or violate the terms of releasing authority certificates.

Note: Casework and Enforcement are components of Case Management.

Allocation Factors:

The allocation of positions is based on the evaluation of three compensable factors:

Skills and Knowledge:

- the extent of the requirement for knowledge of:
 - probation and/or parole programs and applicable legislation;
 - court, legal and related practices and procedures;
 - casework concepts, principles, practices and methods;
 - community service organizations and agencies;
- the type and level of interpersonal and communication skills required;
- the level of administrative, counselling and assessment skills required.

Judgement:

- the level and nature of supervision received;
- the scope for independent decision-making in the conduct of duties.

Accountability:

- the degree of accountability for assigned caseload, administration and integration of community services networks with client needs;
- impact of errors.

Levels:

There are two levels of work within this series.

Probation Officer 1

Entry and training level positions where employees receive formal training in probation and/or parole services. Work is reviewed against training plan criteria to ensure progression.

Probation Officer 2

Working level positions where employees are accountable for a full range of probation and/or parole case management, casework and enforcement services.

Category	Group
ADMINISTRATIVE SERVICES	AD-09 SOCIAL PROGRAMS
Series	Class Code
PROBATION OFFICER	10170

PROBATION OFFICER 1

This class covers training and entry level positions of employees who receive instruction in the practices, principles, methods and techniques related to the provincial probation and/or parole programs.

Under supervision, employees provide case management services in respect of incrementally responsible assignments and work with increasing independence as competence improves.

Progression to the working level is contingent upon successful completion of the ministry's established training program.

Skills and Knowledge:

- knowledge and probation and/or parole programs; applicable legislation; court, legal and related practices and procedures;
- a basic knowledge of casework concepts, principles, practices and methods in order to assume assigned responsibilities for case management and service delivery;
- a knowledge and understanding of community service organizations and agencies sufficient to refer and provide brokerage services on behalf of clients;

- a good level of interpersonal and communication skills sufficient to provide counselling to clients and to families; to establish effective working relationships with colleagues, courts, community agencies etc., and to prepare reports that meet established ministry guidelines and procedures;
- a basic level of administrative skills to organize workload;
- counselling and assessment skills sufficient to understand presenting problems and to establish relationships with clients;

Judgement:

Employees work under supervision but with greater autonomy as experience and competence increases. They are expected to recognize situations which are outside of their experience and/or potentially contentious and to obtain advice or further instructions before taking action.

Judgement is exercised in: interpreting and applying applicable legislation, policies and administrative practices to specific cases; assessing the treatment/rehabilitation needs of assigned clients and developing formal plans to meet those needs; and recommending and/or taking appropriate corrective action in cases of offenders [sic] non-compliance with court orders or releasing authority certifications.

Accountability:

Employees are responsible for supervising cases of varying complexity, where the co-ordination of the employee's activities with those of other organizations is an integral part. At this level, responsibilities are circumscribed by the degree of supervision required.

Impact of Errors

Inadequate or improper action and/or failure to discuss situations requiring supervisor's direction could result in clients committing further offences, clients seriously harming themselves, clients being illegally charged/detained and an increased risk to the community.

Category	Group
ADMINISTRATIVE SERVICES	AD-09 SOCIAL PROGRAMS
Series	Class Code
PROBATION OFFICER	10172

PROBATION OFFICER 2

This class covers positions of employees who, having successfully completed the ministry's established training program, are accountable for performing a full range of services in the provincial probation and/or parole programs.

Skills and Knowledge:

- a thorough knowledge of provincial probation and/or parole programs; federal and provincial correctional and criminal legislation and applicable legislation and regulations respecting children and families;
- a thorough working knowledge of court, legal and related practices and procedures in order to carry out and meet the legal requirements of individual cases;
- a broad knowledge of probation and parole casework concepts, principles, practices and methods relating to the adult and/or young offenders' correctional systems;
- in-depth knowledge and understanding of community service organizations and agencies sufficient to undertake a lead role in such areas as co-ordinating services for clients, identifying service gaps, making alternate service arrangements;
- an excellent level of interpersonal and communication skills to provide counselling to clients; to offer guidance to less experienced probation officers; to establish and maintain an effective network of contacts with the courts,

community agencies, colleagues, etc., and to prepare histories and reports for use for all levels of courts and/or parole boards;

- advanced administrative skills to manage caseload, set priorities;
- well developed counselling and assessment skills to establish and maintain credibility with clientele and to promote a positive client response to societal expectations and norms.

Judgement:

Employees work under general supervision subject to case audits and with considerable functional independence. Advice and guidance is provided as required and employees are expected to consult with supervisor regarding unusual problems or contentious issues.

Judgement is exercised in: interpreting and applying applicable legislation, policies and administrative practices to specific cases and in providing technical advice to less experienced probation officers; assessing the treatment/rehabilitation need of assigned clients and developing formal plans to meet those needs; determining and taking the appropriate corrective action in cases of non-compliance with court orders and releasing authority certificates; providing authoritative advice to contracted service-deliverers in instances where no guidelines are available.

Accountability:

Employees are responsible for the supervision of a varied caseload of clients extending to complex problems involving high-risk probationers, parolees and custody clients.

They are also accountable for the provision of authoritative advice to contracted service-deliverers, where the advice is of a problem solving nature and generally where there are no guidelines available.

Impact of Errors:

Errors in case management and improper advice provided could result in clients committing further offences, clients seriously harming themselves, clients being illegally charged/detained, an increased risk to the community, and may affect the credibility of specific correctional programs.

APPENDIX "B"

10170

PROBATION OFFICER 1CLASS DEFINITION:

This is corrections work performed under direct supervision in the provincial probation program. Following recruitment to the class, employees receive, under supervision, intensive orientation training in the principles and practices of probation work as well as an introduction to the body of knowledge required for carrying out probation duties. When assigned to performance of probation work for the Courts, they carry out a variety of adult and juvenile probation services including preparation of pre-sentence reports, supervision of persons placed on probation and guidance and counselling for probationers, and their families. They ensure that terms of probation including reparation and restitution are carried out as prescribed by the Court. They report on cases of default and they see that such probationers are brought before the Court for sentence. According to the terms of the Probation Act, these employees are ex officio police constables in the exercise of their duties. They receive their assignments directly from the Court. However, they are supervised directly on probation methods and techniques and office administrative procedures by the Supervising Probation Officer in the area. As they attain knowledge of probation work and proficiency in techniques, supervision is diminished accordingly. They are required to develop harmonious working relations with the judiciary, court officials and community groups.

CHARACTERISTIC DUTIES:

Prepare pre-sentence reports as instructed, including social and family histories, for the use of judges and magistrates in determining sentences; prepare special reports on former probationers as requested.

Supervise adults placed on probation through provision of case work services and give guidance and counsel as appropriate.

Ensure that terms of probation are kept, report on cases of default and see that defaulters are brought before the Court for sentence; attend hearings when a breach of probation charge is being laid; receive money being paid into the Court as restitution.

Serve as Clerk for the Juvenile and Family Court and receive money being paid under court order; prepare pre-sentence information; supervise juvenile cases including provision of counselling and guidance; carry out matrimonial counselling aimed at settlement short of court action.

Maintain case records and reports; prepare correspondence; maintain records on restitution payments; maintain case load registers; carry out required procedures on transfer of cases.

Escort persons in custody to detention institutions; as directed, supervise prisoners released from penal institutions under the National Parole Act.

Promote community understanding and acceptance of probation goals and methods; co-operate with community social agencies.

REQUIRED KNOWLEDGES, ABILITIES AND SKILLS:

Evidence of ability to acquire a knowledge of the concepts, principles and practices of probation work.

Ability to acquire a knowledge of federal and provincial statutes and regulations pertaining to probation work.

Evidence of ability to develop productive client-worker relationships in a corrections setting.

Ability to communicate goals and purposes of a probation program to other agencies and interested lay groups.

QUALIFICATIONS:

Bachelor's degree from a university of recognized standing with courses in the social sciences.
(Salary on recruitment is dependent on qualifications.)

APPENDIX "C"

10172

PROBATION OFFICER 2CLASS DEFINITION:

This is corrections work performed under general supervision in the provincial probation program. This class is distinguished from Probation Officer 1 by the increased reliance placed on reports, scope of the assignments and the greater skills and insights which incumbents possess by virtue of academic training and work experience. On instructions of the Courts, these employees carry out a variety of adult and juvenile probation services including preparation of presentence reports, supervision of persons placed on probation and guidance and counselling of probationers. They ensure that terms of probation including reparation and restitution are carried out as prescribed by the Court. They report on cases of default and they see that such probationers are brought before the Court for sentence. According to the terms of The Probation Act, these employees are ex officio provincial police constables in the exercise of their duties. Although their assignments come directly from the Court, they receive supervision from the Supervising Probation Officer for the area on probation methods and techniques and office administrative procedures. They may provide some guidance to trainee Probation Officers 1 and they usually supervise stenographic staff. They are required to develop harmonious working relations with the judiciary, court officials and community groups.

CHARACTERISTIC DUTIES:

Prepare pre-sentence reports as instructed, including social and family histories, for the use of the judges and magistrates in determining sentences; prepare special reports on former probationers for use of treatment staffs in penal institutions.

Supervise adults placed on probation through provision of case work services and give guidance and counsel as appropriate.

Ensure that terms of probation are kept, report on cases of default and see that defaulters are brought before the Court for sentence; attend hearings when a breach of probation charge is being laid; receive money being paid into the Court as restitution.

Serve as Clerk of the Juvenile and Family Court and receive money paid under court order; prepare pre-sentence information; supervise juvenile cases including provision of counselling and guidance; carry out matrimonial counselling aimed at settlement short of court action.

Maintain case records and reports; prepare correspondence; maintain records on restitution payments; maintain case load registers; carry out required procedures on transfer of cases.

Escort persons in custody to detention institutions; as directed, supervise prisoners released from penal institutions under The National Parole Act.

Promote community understanding and acceptance of probation goals and methods through lectures and discussions; co-operate with community social agencies.

REQUIRED KNOWLEDGES, ABILITIES AND SKILLS:

Thorough knowledge of the concepts, principles and practices of probation work including the implications of a corrections setting for case work.

Strong identification with the probation function and demonstrated ability in carrying out the requirements of the Probation Services Branch and the courts served.

Thorough knowledge of federal provincial statutes and regulations and court decisions pertaining to probation work.

Demonstrated ability in developing productive client-worker relationships in a corrections setting.

Skill in communicating goals and purposes of a probation program to interested lay groups and other agencies.

QUALIFICATIONS:

Successful completion of the departmental in-service training courses and passing (i.e. obtaining at least 70%) each of the four parts of the Barrier examination.

IN THE MATTER OF AN ARBITRATION

BETWEEN CROWN IN RIGHT OF ONTARIO
 (MANAGEMENT BOARD OF CABINET)

AND

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

IN THE MATTER OF THE GRIEVANCE OF
REVISED WAGE RATES FOR PROBATION OFFICERS 1 & 2

A D D E N D U M

I have reviewed the Award of the Chairman. While I concur with the general approach, I would have awarded an increase of 8.5%. This represents approximately 1/2 the distance between the old PO 2 and PO 3 pay rates. In my view, the change in functions has been sufficient to bring the PO 2 classification to such a midpoint when a comparison is made to the old PO 2 and PO 3 positions.

On the question of the Board's jurisdiction, I would agree that the Board is free to consider factors such as those in Section 12 of the Crown Employees Collective Bargaining Act. However, I prefer the Union's position that we are a Board acting in accordance with the provisions of the Act. That is not to say that we are not also governed by Article 5.8 of the collective agreement. But the Parties have clearly used the provisions of C.E.C.B.A. to establish an ad hoc Board of Arbitration. We are not a panel of

the Grievance Settlement Board set up in accordance with Article 27. Therefore, when Article 5.8 refers to "Arbitration", in my view, the provisions governing such an arbitration are those of the Act which are applicable, including Section 12.

Nevertheless, the ultimate exercise of the Board may turn out to be the same in any event.

Date at Toronto, Ontario on the 15th day of February, 1989.

Larry Robbins
Larry Robbins, Union Nominee

IN THE MATTER OF AN ARBITRATION

BETWEEN: THE CROWN IN RIGHT OF ONTARIO

AND ONTARIO PUBLIC SERVICE EMPLOYEES UNION

AND IN THE MATTER OF THE ESTABLISHMENT OF SALARY RANGES FOR THE PROBATION OFFICER CLASS SERIES

BOARD OF ARBITRATION: Maureen K. Saltman, Chairman
Ian J. Cowan, Employer Nominee
Larry Robbins, Union Nominee

APPEARANCES:

FOR THE EMPLOYER: Rick Itenson, Representative

FOR THE UNION: Andre Bekerman, Representative
Joanne Miko, Representative

PARTIAL DISSENT

I have carefully read the decision and while I am in agreement with the conclusions regarding jurisdiction and retroactivity I find I must, with respect, disagree with the comments on page 13 relating to the consideration of salaries in other jurisdictions and also with the quantum of the award.

Since we are agreed our jurisdiction derives from Article 5.8 of the collective agreement I believe it is inappropriate to consider salaries outside the public service as contemplated in Section 12(2)(b) of the Crown Employees Collective Bargaining Act. Such consideration, when dealing with

a single classification, has the potential to isolate that class from related classifications within the category and may result in salary distortion. Consideration of salaries outside the public service is, in my opinion, more appropriate and should be reserved for category bargaining.

With regard to quantum I believe the award gives too much weight to the significance of added functions and too little to those functions which have been removed.

In the result I would have awarded an increase of 2%.

DATED AT TORONTO, this 27th day of February, 1989.

"Ian J. Cowan"
Employer Nominee

180 Dundas Street West, Suite 2100, Toronto, Ontario M5G 1Z8
180, rue Dundas ouest, Bureau 2100, Toronto (Ontario) M5G 1Z8

Telephone/Téléphone: 416/326-1388
Facsimile/Télécopie : 416/326-1396

T/59/87

CROWN EMPLOYEES COLLECTIVE BARGAINING ACT, R.S.O., 1980, C.108

ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL

Between:

Ontario Public Service Employees Union

Applicant

- and -

The Crown in Right of Ontario
(Management Board of Cabinet)

Respondents

BEFORE:

J. Ord
J. MacPherson
B. Switzman

Chairperson
Member
Member

FOR THE
APPLICANT:

J. Miko
Job Evaluation Officer
Ontario Public Service Employees Union

FOR THE
RESPONDENT:

M. Farson
Counsel
Fraser & Beatty
Barristers & Solicitors

HEARING:

February 13, 1990
May 14, 1990
June 11, 1990

In an interim ruling, the board ruled unanimously that it had the jurisdiction to decide upon the remaining issues in dispute between the parties.

At further hearings the parties were given full opportunity to make presentations on the merits of the differences that they held on the issue of placement on the grid and on the matter of interest payable due to the failure of the employer to pay all monies owing within the time stipulated in the board's original award.

On the first issue of the placement on the grid, the union demonstrated that the majority of the Environmental Officers were paid less than the 12% increase stipulated in the original award of this board. It would appear that only the most junior employees at the lowest grade of the old Environmental Technician series received the full 12% increase.

The employers position was that the original award of the board was in fact a reclassification. Article 5.8 of the collective agreement that triggered the dispute deals with matters of classifications. Thus when the employer received the October 11, 1989 award, it applied its own internal policy rules contained in a document titled: PAY TREATMENT ON RECLASSIFICATION DUE TO NEW OR REVISED CLASS STANDARDS.

The employer also took into account a number of other classification revisions that had taken place with the old environmental technician series either as a result of G.S.B. awards or as a result of internal decisions by the employer. By calculating these earlier reclassifications, the employer claimed that some employees could receive increases over 30%, if the 12% increases in the October 11, 1989 award were fully implemented.

The employer also argued that in the matter of promotions, the union had negotiated a cap on the amount one could receive in moving up the grid.

In the alternative the employer argued that the union was estopped from seeking relief from the application of the pay rules that were applied in this situation. Ms. Farson argued that the parties had lived with this PAY TREATMENT POLICY for some period of time and the union had permitted its usual application. Counsel then stated that the detriment to the employer existed because the employer had no opportunity during the course of negotiations to enforce its view of the application of the pay policy. Therefore, the employer's counsel requested that the Board rule that for the period of this collective agreement, the union is estopped from asserting its interpretation of the collective agreement.

In reply Ms. Miko argued that this board was not reclassifying any of the affected employees. All reclassifications had already occurred due to decisions of the G.S.B. or due to the internal decision making process of the employer. The dispute that this Board had to deal with was the quantum of payment owing to these employees. At the original hearings of the board the employer had argued for no increase and the union argued for a substantial improvement. As to the matter of an estoppel, until these recent events there has been no dispute in regards to a 5.8 reclassification such that it could be demonstrated that the union acquiesced in the employer's interpretation. The union also disputed the presence of any detrimental reliance on the part of the employer.

DECISION:

The matter of the placement of environmental officers on the grid was not placed before this board in the hearing that led up to the October 11, 1989 award. Because we did not deal with this previously, jurisdiction was retained to complete our award.

Upon review of all of the evidence and submissions of the parties, the Board agrees with the union position on the matter of the placement on the grid. The original award dealt with the history of the changes during the reclassification of the environmental technician series to environmental officers. It was a result of grievances filed before the G.S.B. over a decade ago that this process of producing a new class standard began. By the time of the October 11, 1989 award, many reclassification had occurred. Our award was not intended to diminish the results of the G.S.B. decisions nor those made voluntarily by the employer.

The original award of this board dealt with the quantum of payment that should be provided to these employees. Section 5.8 provides for a process of setting a new salary range. If the parties can't agree on a new salary range, the employer can set the new salary range, subject to the right to have the rate determined by arbitration. Our October 11, 1989 award responded to that dispute. Because that award did not trigger any new reclassification it is inappropriate for the employer's pay policy rules to be applied. Our award then is for a step to step increase of 12% and it should be so implemented within 45 days of the date of the issuance of this award. Should it not be paid within this time frame, then interest shall be owing, pursuant to the usual formula used by these parties. Interest owed would be payable back to October 11, 1989.

The employer's position on estoppel does not apply to this situation. In any event the employer did not satisfy its onus to show a representation by the union, nor was there ample evidence to satisfy the board that there was a detrimental reliance on the part of the employer.

INTEREST

We received extensive submissions, oral evidence and argument by the parties on this issue. The matter of interest was argued before us and in the original award the board did not award interest. The board did however set an effective date by which the payment was to have been made by the employer. The employer brought forward cogent evidence by which it argued that it made its best efforts to meet the deadline. However, it is our award that we are without jurisdiction to deal with this matter. This is a dispute not dealing with the completion of our award but with the enforcement of a term of our award that is singularly clear as to what it says. Thus if the parties cannot resolve this issue, the proper forum for disposition of this difference is the G.S.B.

We retain jurisdiction to complete the award.

Dated at Brampton, Ontario, this 5th day of September,
1990.

John D. Paul
CHAIRMAN

I DISSENT "JOHN MCPHERSON"
EMPLOYER NOMINEE

Brian Ferguson
UNION NOMINEE

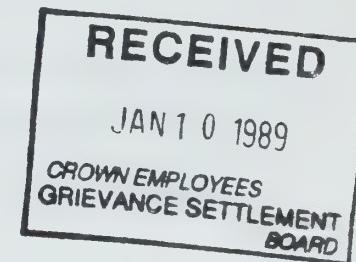
T/63/87

IN THE MATTER OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

AND IN THE MATTER OF AN ARBITRATION

B E T W E E N :

THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(the "Union")



- and -

THE CROWN IN THE RIGHT OF ONTARIO
(the "Employer")

AND IN THE MATTER OF THE MAINTENANCE SERVICES CATEGORY

Board of Arbitration

John T. Clement, Q.C.
Wally Majesky
Peter Camp

Chairman
Union Nominee
Employer Nominee

Appearances for the Union:

André Bekerman
Chris Schenk
Darryl Ford
Noreen Angus
David Skeffington
Ron Engelmann
Art Anderson
Dave Swibb
Linda Pehlke

Appearances for the Employer:

Eileen Hipfner
W.W. Jarvis
Elsie Moolgaokar
Robin Saxton
Shirley Anderson
John Kenney
Alan Lambert

Hearing

Toronto, Ontario
October 12th, 1988

Award

This Board was constituted to resolve a wage rate dispute between the parties for 1988 pursuant to Section 10 of the Crown Employees Collective Bargaining Act, 1980 R.S.O. chapter 108, the previous collective agreement having expired on December 31st, 1987.

The Maintenance Services Category is one of eight categories and which categories cover some 719 classifications and approximately 49,525 employees.

Within the Maintenance Services Category are 131 classifications covering some 4,990 employees. Within the Maintenance Services Category are some 7 sub-classifications, being aircraft, trades and crafts, vehicle operation, marine operations, heating and power and printing. The aircraft sub-classification encompasses four groups being air engineer, assistant plant superintendent, air services, pilot and senior air engineer. The trades and crafts sub-classification encompasses some 73 occupations ranging from maintenance electrician to weigher. The 1987 average weekly wage for members of the Maintenance Services Category was \$522.86, (\$27,282.00 per annum). The average weekly salary for all eight categories was \$545.86, (\$28,482.00 per annum). Of the eight categories that comprise the service-wide bargaining unit, four categories have settled their respective salaries for 1988, two categories have received offers from the employer which are subject to ratification by the respective memberships and one other category in addition to the Maintenance Services Category is proceeding to arbitration. Settlements already accepted which are subject to ratification range from 4.557% (Correctional Services) to 4.716% (Administrative Services).

At the commencement of this hearing, no objection was taken as to the jurisdiction of this Board by either party.

The following matters were in issue and addressed at the hearing:

1. Wages,
2. Term of Agreement,
3. Retroactivity and Interest,
4. Implementation,
5. Tool Allowance.

Wages

The Union pointed out the growth of the Ontario economy since 1982 was 35.5%. The population of Ontario has grown 6.5% during the same period and gross domestic product per capita has risen 27%. Unemployment has declined from 9.8% in 1982 to 6.1% in 1987 and is forecast to be even lower in 1988.

In spite of this very positive economic growth, the Union is of the view that its members have not shared in the general over-all prosperity. From 1982 to 1987, the CPI averaged 4.9% per annum whereas the public sector income has only risen 5.1% average per annum, thus marginally keeping ahead of the CPI erosion of income. The private sector during the same period averaged 4.5% growth per annum which indicates to the Union that workers in the private sector were "more concerned with issues than with wages". The difference between the public and private sectors during this period may well be also due to the fact that the public sector is barred from striking to enforce its demands by legislation. The Union warned the Board that the Ontario Ministry of Labour statistics comparing the public sector and public sector increases for 1983 and 1984 viz a viz the right to strike vs compulsory arbitration, (Table 5 in the Union brief) should be interpreted cautiously because of the effect of the Ontario legislation in effect in 1983 and 1984. This legislation in 1983 "rolled back" public sector settlements which, though reported as exceeding 5%, in fact were reduced to 5%.

The Ontario Public Service wage increases from 1983 to 1987, (both years included), totalled 28.6% when compared with other public service sectors also prohibited from striking, which received 30.7%.

The Union submitted that the public service productivity has increased since 1982. The population has grown larger yet the public service complement has not grown at the same rate, therefore more members of the public population are being served by less public service employees ie: 101.2 members of the public per public service employee in 1982-83 has grown to 103.2 in 1987-88. The value of services per citizen measured in constant dollars (with interest costs excluded), has grown 17.7% over the past five years.

Ontario Treasurer Robert Nixon, in his 1988 budget, forecast the CPI for 1988 to be 4.7%. To August 31, 1988, the CPI was 4.5% (Ex. 4 - Employer brief). The Union points out that in its view there can be no gain in purchasing power for its members, unless wages are increased "by 5% at least. An increase of more than 5% is necessary if government employees are to be able to share in the rise of consumer spending of which the Treasurer spoke and continues a key component and requirement of continued prosperity".

The Union, in its submissions, pointed out a variety of "gaps" which have resulted in its members receiving less since 1982 than other groups with which it should be compared.

(a) The Maintenance Services Category has received cumulative wage increases of 27.2% since 1982, whereas the cumulative wage increases across the eight categories of the Ontario Public Service for the same period are 28.6%. The Union therefore seeks a 1.6% (?) increase by way of a catch-up to correct this situation. (It should be noted that Table 7 on page 55 of the Union brief refers to the cumulative total for the period to be 27.1% and not 27.2%. The Board presumes 27.1% to be the correct figure, thereby reducing the catch-up figure to be 1.5% and not 1.6%).

The Maintenance Services Category stands sixth from the top in wage increments paid to the eight categories of government employees between 1982 and 1987. (Table 5 - Employer Brief).

(b) During the same time period, the CPI increased by 27.3% to bridge the gap between the CPI and actual increases, an increase of 0.2% would have to be awarded.

(c) The 1987 wage increase was 4.4% whereas the CPI in Ontario was 5.1% higher in 1987 than in 1986. The Union seeks an increase of 0.7% to remedy this "gap".

(d) Within the Ontario Government Services, from 1982 to 1987, three categories, namely, Administrative, Scientific and Professional Services and Technical Services received increases of less than 25.0%. The average increase of the other services was 32.3%. The Union requests an additional 4.1% (?) to remedy this "gap". (It would seem to this Board that the figure requested herein should be 5.2%, i.e.: 32.3% minus 27.1%).

Evidence was submitted pertaining to other groups within the public sector. The Ontario Nurses Association and 167 Ontario hospitals have negotiated a three year collective agreement commencing April 1st, 1988 providing for increases of 4.7% the first year, 5.3% the second year and 5.6% the third year.

Fifty-seven police agreements for 1988 have average increases of 5.3%; thirteen of these agreements are between 4% and 5%, twenty-seven are for increases of 5% to 6% and seventeen cover increases of 6% to 7%.

Forty-four firefighting agreements have been negotiated, some being new and the others covering 1988 as the second year of a two year agreement. These 1988 agreements average 5.2%. Twenty-one agreements give

increases from 5% to 6%, nine provide increases of 6% and over, and fourteen (which include 1989), have pay increases of 4.8%. To equal the salaries paid to police officers, this Board would have to award an increase of 6.4% and for firefighters, 6.8%.

With reference to the private sector, the Union described pay increases paid by Inco (21.8% over 1988-1981, plus cost of living roll-ins being 28.7% over the three years plus a new nickel bonus of approximately \$2,080. in retroactive pay plus improved pensions, sickness and accident benefits, dental coverage, vacation pay and shift premium pay). Reference was also made to current wage rates paid by General Motors for skilled and unskilled groups.

Details of the settlement effected between the Ontario Medical Association and the Government of Ontario were provided to the Board. The increase for 1987-1988 was 5.3% and the cumulative increase since 1982 was 45.0%. The Union brief pointed out that these increases were in a gross amount, that is to say, that from these increases the medical practitioner would have to pay his or her overhead expenses for staff, rent, supplies, etc.

The Union is of the view that the Maintenance Services Category can best be compared with Ontario Hydro. Ontario Hydro fits under the umbrella of the Government of Ontario. Both groups have comparable jobs. The salaries paid at Ontario Hydro and by the Ontario Public Service are province-wide rates. There is a similarity of funding in that the source of funding in each case is from the public purse. Ontario Hydro employees have the right to strike while the maintenance service employees do not and this is really the only difference between the two groups of employees.

- / -

The Union seeks wage parity with Ontario Hydro because the respective employees of each group are performing equivalent tasks. A certified electrician or an "A" trades mechanic should be paid the same rate regardless of where he or she is employed, particularly when the "community of employment" such as the Government of Ontario being the common employer etc. is concerned.

A great deal of statistical detail was submitted to the Board in support of the Union's request for "parity with Ontario Hydro".

Some wage comparisons were as follows:

Electrician

Jan. 1/87	OPS	\$14.15
Jan. 1/88	Ontario Hydro	18.42 (+\$4.27 or 30.2%)
April 1/88		19.18
April 1/89		19.95

Mechanic

Jan. 1/87	OPS	14.15
Jan. 1/88		19.18

Labourer

Jan. 1/87	OPS	10.81
April 1/87		14.49 (+\$3.68 or 34%)
April 1/88		15.09
April 1/89		15.69

For comparative purposes, a number of representative classes were used as "benchmarks", those benchmarks being the classifications of electricians, mechanics, machinists and labourers. The Union has not alluded to somewhat more specialized electricians employed by Ontario Hydro,

such as thermal electricians or nuclear electricians but refers to a journeyman electrician classification only. Ontario Hydro employees are presently working under a collective agreement which runs from April 1, 1987 to March 31, 1990.

To accede to the Union proposals for parity with Ontario Hydro would result in a wage increment in excess of 30% plus the "catch-up" items referred to earlier in the Union proposal, in all approximately 38%.

Both parties conceded that current wage rates paid in the construction industry are probably not applicable in the present instance.

The Employer is opposed to the tying of the Maintenance Services Category groups with the single benchmark of an electrician. In the present matter, there are 131 classifications within the Maintenance Services Category and no rationale exists to permit this Board to select one job classification upon which to build or frame its award. The Employer pointed out that there is no history of parity between wages in the Ontario Government Service and Ontario Hydro. The Employer quoted the Workers' Compensation Board Arbitration Award of August, 1979 wherein Chairman Stanley M. Beck stated, inter alia, "the settlements at Hydro are not relevant for comparative purposes with any other sector of the public service in Ontario".

The Union submission pertaining to increased productivity over the years should likewise be disregarded because of the advances made by "common technological innovations and corresponding efficiencies and working methods". (Michel G. Picher, Chairperson, Administrative Services Wage Bargaining Category Arbitration, June, 1985). The notional ideas of productivity should not be imposed in this award by this Board.

The Employer likewise opposed the concept of including "catch-up" items as proposed by the Union. The employer pointed out that collective agreements were negotiated between the parties in 1986 and 1987 without such items having been included, and accordingly, it would not be appropriate for this Board to award same in this hearing. Counsel for the employer endorsed the position of Ross L. Kennedy, Chairman, of the Ryerson Faculty Association Arbitration in June, 1981 where that Chairman pointed out "there are a myriad of reasons behind every collective agreement settlement, but once that settlement has been made, those reasonings and concessions must be considered to have merged in the settlement and the settlement must stand as the free and voluntary decision of the parties".

Each of the eight categories within the Ontario Public Service Employees' Union negotiates its own wages and counsel for the Employer pointed out that six of those eight categories have negotiated settlements for 1988, (albeit two are subject to membership ratification), ranging from 4.557% to 4.716%. The Maintenance Services Category have demonstrated no different need or needs distinguishing it from those other categories which have already settled.

It was pointed out to the Board that the retention of employees within the present category is exceptionally high in that only twelve employees resigned in 1987 for a better-paid position as their reason for leaving. This represents a loss factor of 0.241% as compared with the overall Ontario Public Service average of 0.398%. Open position competitions for the twelve months preceding March 31st, 1988 attracted an average of 12.23 applications whereas "in-house" position competitions for the same period attracted 14.7 applicants per competition.

This Board, when considering all of the evidence and arguments before it, must somehow make a determination after considering that evidence and weighing the relevance of same, subject always of course to the provisions of Section 12(2) of the Crown Employees' Collective Bargaining Act. We must consider the value of the right to strike which exists across most, if not all, of the private sector with the absence of that right under the existing Ontario legislation. While not bound by the decisions of other arbitration boards, this Board has been invited in certain instances to adhere to or be guided by previous awards. Certain elements in the private sector experience, from time to time, boom or bust economies and we must consider whether the current wage settlements payable in those sectors are indeed applicable in the instant matter. It is trite to state that the role of any arbitration board in the matter of wages cannot certainly be compared with the responsibilities of those who practice exact sciences. Into the mix of all of these considerations must be placed the relevant data submitted by both parties so that the factors set forth in Section 12(2) shall be considered following which, hopefully, an equitable result will ensue. It is, of course, an impossible task to produce a result that meets the needs and aspirations of all parties. Each side to an arbitration hearing takes a calculated risk that the result will not be to its liking. While there is no obligation upon the employer in the present matter to grant an increase which exactly equates the CPI, we note that historically since 1982 negotiated settlements between the parties hereto have resulted in a wage settlement slightly above the inflation rate. We note that the percentage of difference in wage differentials between Ontario Hydro employees and those in the Maintenance Services Category has existed for a number of years. We do not adopt the Union invitation to award "parity with

"Ontario Hydro" for a number of reasons. To endorse such a view would be to relegate the collective bargaining process for the Maintenance Services Category to the Ontario Hydro bargaining agent(s) as well as completely disregarding the statutory provisions imposed by Section 12(2) of the Crown Employees' Collective Bargaining Act. This Board is of the view that there is no inside or outside group with which an absolute identification can be made which should form the basis for a wage award. A spectrum of items must be considered, both inside and outside of the Government Service, (including Ontario Hydro), before any rational conclusion can be drawn. 1988 Ontario Ministry of Labour data for the first quarter indicates that collective agreements without COLA averaged 4% and for the second quarter of 1988 averaged 4.7% with the construction industry excluded. With the construction industry included, (but excluding COLA), the 1988 second quarter settlements in the private sector averaged 5.9%, (as compared with 4.2% in the 1988 first quarter).

The same comparison for the same periods in the public sector showed 4.9% in the 1988 second quarter as compared with 4.0% in the 1988 first quarter.

The construction industry in Ontario is presently enjoying a booming economy. To exclude it entirely in the deliberations would be to ignore reality. Construction workers compete for consumer goods along with all other wage earners in the community as a whole. The growth of the economy includes the construction industry as well as reflecting reduced unemployment rates. Whether one excludes or includes the 1988 construction industry settlements, they cannot be entirely ignored. 1988 second quarter settlements have been substantially higher than those effected during the 1988 first quarter settlements, whether construction settlements are included or ignored.

Having regard to all of the evidence relating to 1988 increases, the data pertaining to public and private sector settlements, the provisions of Section 12(2) of the Crown Employees' Collective Bargaining Act, and the obligation of this Board to replicate collective bargaining, this Board awards a wage increase of 5.2% to be effective January 1st, 1988 to all rates in effect on December 31st, 1987, as contained in Appendix "A" of the 1987 agreement. The increase shall be retroactive to January 1st, 1988, and payable on a full or pro-rata basis to all employees who are or were in the category and to apply to all overtime worked.

Term of Agreement

The Union proposed that the term of the agreement be one of two years to enable the Board to make an award on a "parity with Ontario Hydro" basis so that same could be staged over 24 months rather than 12. The Employer resisted this proposal, pointing out that all negotiations were framed on a one year contract only.

1988 collective agreements negotiated within the other categories of the Maintenance Services Category are for a term of one year. This Board has not been persuaded that this award should extend beyond December 31st, 1988.

Retroactivity and Interest

The Union request for the award to be retroactive to January 1st, 1988 has been agreed upon in principle by the parties and has been referred to in the section pertaining to wages in this award.

The Union seeks an allowance for interest from January 1st, 1988 on any wage award made by this Board. The Employer, of course, resists this request.

This Board has not been persuaded that this Union proposal should be granted and accordingly same is denied.

Implementation

The Union seeks an order from this Board compelling the Employer to pay out any increment awarded not later than 30 days from the issuance of the award. The Employer has pointed out that time is required for implementation of the award in view of the required processes involved. The Employer acknowledged that during the bargaining in 1988, the parties agreed to an implementation period of 50 days from official notice to the Employer of the ratification of the agreement by the Union.

The award of this Board is that the wage increase awarded herein shall be implemented by the Employer within a period of 50 days from the date hereof and in no event shall it exceed a period of 60 days from the date hereof. This Board further directs that this requirement shall be a term of the collective agreement resulting from this award.

Tool Allowance

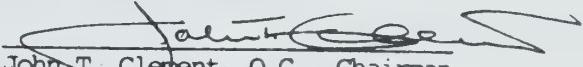
The Union proposes that the tool allowance of \$71.00 per year be tied to the amount of the general wage increase for the category and that same be automatically added to the tool allowance each and every year.

The Employer resists this request and points out that tool allowance increases were negotiated in 1986 and 1987. The Employer is further of the view that this item is not to cover the full cost of maintaining or purchasing tools but is to defray a portion of those costs only.

This Union request is denied. This Board awards a tool allowance of \$71.00 for 1988 to be paid to those employees who qualify for same.

This Board reserves its jurisdiction to deal with any matters which may arise in the implementation of this award.

Dated this 19th day of December, 1988.


John T. Clement, Q.C., Chairman


Wally Majesky, Esq.

WRITTEN DISSENT TO FOLLOW
Peter D. Camp, Esq.

IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN

THE CROWN IN THE RIGHT OF ONTARIO

AND

THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION

AND IN THE MATTER OF THE MAINTENANCE SERVICES CATEGORY

ADDENDUM

I concur with the award, not because the 5.2% wage increase is equitable in addressing the ever widening gap between Maintenance Services Category employees and other government agencies like; Ontario Hydro and the prevailing private sector wage rates for similar classes of employees at Inco, Algoma and Stelco, as well as General Motors (Oshawa), and last but not least, the wage settlements in the construction industry.

My reasons for concurrence of the award is that the 5.2% wage increase clearly signals, and more importantly, recognizes that there is a ever increasing gap between the Maintenance Service Category and the other government employers, as well as other private sector employers. The chairman of this arbitration board, Mr. John Clements, makes a clear reference to private sector construction wages when on page 11 of this award, he states:

"The construction industry in Ontario is presently enjoying a booming economy, to exclude it entirely in the deliberations would be to ignore reality. Construction workers compete for consumer goods along with other wage earners in the community as a whole. The growth of the economy includes the construction industry, as well as reflecting reduced unemployment rates. Whether one excludes or includes the 1988 construction situation, it cannot be entirely ignored..." [emphasis added]

This is a recognition that arbitration boards should look at other jurisdictions as they relate to wage settlements or impact on arbitrations such as this one.

Secondly, in the area of adhering to prevailing wage settlements in the Public Sector, as argued by the employer; the chairman, Mr. John Clements clearly does not agree with the argument put forward by the employer and on page 10 states:

"We must consider the value of the right to strike which exists across most, if not all of the private sector, with the absence of that right (for certain public sector employees) under the existing Ontario Legislation. While not bound by the decisions of other arbitration boards, this board has been invited, in certain instances to adhere to, or be guided by previous awards.

Certain elements in the private sector experience from time to time, boom or bust economies and we must consider whether current wage settlements payable in those sectors are indeed applicable in the instant matter. It is trite to state that the role of any arbitration board in the matter of wages cannot certainly be compared with the responsibilities of those who practice exact sciences (supposedly in other sectors like construction, etc.)"
[emphasis added]

What this award accomplishes, is that it recognizes the principle that comparisons with other sectors on wage settlements are valid and more importantly, it doesn't accept the principle that any public sector settlement in Ontario is therefore the rule of thumb, or binds other arbitration boards to use this as a benchmark settlement.

This award of 5.2% clearly upholds this principle and clearly recognizes that the average of 4.557% - 4.716% for the six government categories is not to be seen as a precedent, or benchmark for other government categories, with respect to wage settlements.

In summary, this arbitration board is clearly recognizing that there is a substantial wage discrepancy or gap for the employees of the Maintenance Service Category and that this clearly is a signal that even though the award falls short of closing the gap, at least future arbitration boards are going to have to address the inequality and contribute in a similar way to narrowing the wage gap.

Implementation

In the area of implementation, I would like to comment that even though it has been argued that implementation cannot be done any sooner than 50 days from official notification to the employer, I would strongly suggest that there has to be ways and means of

shortening that period from 50 days to the requested 30 days. Surely in this age of new technology and new management information systems, one can implement or pay out any wage settlements within the 30 day period.

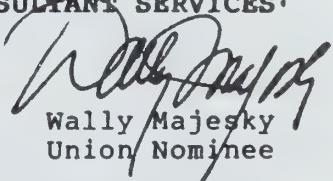
Interest

In the area of interest on any wage award, I think its unfair to have employees wait for almost a year for a wage settlement without just compensation like interest paid on monies owed them. My rationale, quite simply is that the employees of the Maintenance Services Category are in fact penalized by the arbitration process, in that the process is so lengthy and requires an inordinately long time to get a settlement. More importantly, this process is totally out of the hands of the employees with respect to speeding up the process. So not only do the employees not have the right to strike, but the arbitration process unjustly penalizes them in that they do not get access to the wage settlements that they are legally and dutifully entitled to from the date of expiration of the previous collective agreement.

To me it seems a bit unjust to deny employees the interest on any retroactive settlement, which is through no fault of their own.

Respectfully submitted,

PP LABOUR CONSULTANT SERVICES.



Wally Majesky
Union Nominee

WM/mg

Markham, Ontario
December 12, 1988

c.c. Pete Camp

In the Matter of Arbitration

Between:

The Ontario Public Service Employees Union

and-

The Crown in the Right of Ontario

I have read the award which provides an increase of over 5% which I find unsupportable with consideration to the available facts as presented to the Board of Arbitration October 12, 1987.

In my review of the reasoning I find:

dealing first with "gaps" (Page 4), any consideration to catch up with other cumulative increases since 1982 by the Maintenance Services Category just does not seem appropriate when it is considered that the level of increases negotiated each year was agreed to and ratified by the employees (except where such was the result of an arbitration award).

Dealing secondly with the level of increases in the public

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Sector (Page II) being higher in the second quarter than the first quarter such congeries which includes increases negotiated as late as May and June 1988 certainly should not influence an increase having effect January 1, 1988. It is of note that the second quarter increase level was reported as 4.9%. Even this consideration would not support an increase in excess of 5%.

With consideration of all the facts presented to the Board of Arbitration, in particular the range of increases already accepted by six of the eight categories, an increase in the accepted range of 4.55% to 4.71% would be appropriate.

In view of the foregoing this member, with respect, must dissent in the conclusion of the award of a wage increase in excess of 5%.

J. B. Lamp

12 December 1988

T/104/87

IN THE MATTER OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT
AND IN THE MATTER OF AN ARBITRATION

AND THE CROWN IN RIGHT OF ONTARIO

AND IN THE MATTER OF THE INSTITUTIONAL CARE CATEGORY

BOARD OF ARBITRATION: Maureen K. Saltman, Chairman
George J. Milley, Employer Nominee
Larry Robbins, Union Nominee

APPEARANCES:

FOR THE EMPLOYER: Mike Milich, Staff Relations Officer

FOR THE UNION: André Bekerman, Senior Negotiator
Bob Hebdon, Senior Research Officer

A W A R D

The Ontario Public Service is divided into eight occupational categories for wage bargaining. This arbitration covers some 5,218 employees in the Institutional Care Category, who are mainly involved in the care of patients and wards in Ontario Psychiatric Hospitals, students in the Schools for the Blind and Deaf and residents of Mental Retardation Centres. Although there are 33 classifications in the Institutional Care Category, over 76% of the employees are classified either as Counsellors (Residential Life) or Psychiatric Nursing Assistants ("P.N.A.'s").

The previous wage agreement between the parties expired on December 31, 1987. The parties have agreed that the new agreement, which will result from this award, will cover the period from January 1, 1988 to December 31, 1988. The parties have also agreed that the award will be fully retroactive to January 1, 1988 and shall apply to all hours paid, including all overtime hours, to employees who were in the category at any time during the calendar year 1988.

There are three issues to be decided in this case:

- (1) General Wage Increase

- (2) Special Adjustments
 - (a) Ambulance Officers
 - (b) MRC Trainees
 - (c) Child Care Assistants
 - (d) Classroom Assistants
 - (e) School Aides
- (3) Interest and Implementation

These issues will be dealt with in the order set out above.

(1) GENERAL WAGE INCREASE

The Union's proposal is for an increase of \$1.10 per hour across-the-board for all classifications, effective January 1, 1988. The Union is also seeking special adjustments for the following classifications: Ambulance Officers, MRC Trainees, Child Care Assistants, Classroom Assistants and School Aides, the last two of which are in the unclassified service.

In support of its position, the Union relied on the following factors:

- (1) Ontario's "substantial" economic growth;
- (2) wage settlements in both the public and private sectors;

- (3) an increase in productivity of employees in the Institutional Care Category;
- (4) a decline in working conditions; and
- (5) a comparison with Nurses in the public sector.

With respect to the first factor, the Union referred to Ontario's strong economic growth and submitted that employees in the Institutional Care Category were entitled to share in this growth. As evidence of growth, the Union relied on certain economic indicators, including increases in the Ontario Gross Domestic Product and in the Ontario Consumer Price Index, which averaged 4.5% for the 12-month period ending July, 1988. The Union submitted that if real wage gains are to be achieved by employees in the Institutional Care Category, the wage increase awarded must be well in excess of 4.5%.

With respect to the second factor, the Union submitted that the object of interest arbitration is to approximate as closely as possible the outcome which would have been reached through free collective bargaining. The Union further submitted that wage settlements in the private sector and even those in the public sector are the best indicator of the settlement that would have been reached through collective bargaining. The Union

submitted data with respect to the average annual increase in base rates for agreements covering 200 or more Ontario employees (excluding construction). That data reveals an average annual increase for the first quarter of 1988 of 4.0% for agreements without COLA in both public and private sectors. Included within this figure is the settlement between the Ontario hospitals and the Ontario Nurses' Association. As that settlement was higher at the maximum than at the base, the Union claimed that the 4.0% figure (which takes into account increases on base rates only) is artificially low. By considering only one-year agreements (and thereby excluding the Nurses' settlement), the average annual increase for agreements without COLA for both the public and private sectors for the first quarter of 1988 is 5.2%.

In addition to data respecting average wage settlements, the Union referred to particular settlements in the private sector and in the public sector outside the Ontario Public Service which, it was submitted, are indicative of a trend in wage settlements. These include (1) the settlement between INCO and the United Steelworkers of America, Local 6500, which provides a 21.8% increase over three years, as well as a cost of living allowance and nickel price bonus; (2) police and firefighter settlements, which averaged 5.3% and 5.2% for 1988, respectively; (3) the settlement between the Ontario Government and the Ontario Medical Association which provides doctors with

an increase of 4.0% as of January 1, 1987, for a total of 45% for the period from 1982 to 1987; and (4) construction sector settlements ranging from 5.9% to 8.8%, when calculated on a one-year basis.

The third factor on which the Union relied was increased productivity. In this regard, the Union submitted that employees in the Institutional Care Category had become more productive over the years and were, therefore, entitled to share in the fruits of their productivity. In support of its argument, the Union submitted data which demonstrates that (1) there has been an increase in the average population served per employee in the Institutional Care Category of over 25% in the period from 1982 to 1987; and (2) there has been an increase in patient care load, i.e., in the average number of patients assigned to each employee, in psychiatric hospitals of some 9% in the four-year period from 1983 to 1987 over the period from 1979 to 1982.

The Union also relied on a decline in working conditions. Although an argument respecting working conditions has been made before previous boards of arbitration, the Union took the position that a more cogent argument can be made before this Board as (1) working conditions have worsened for "direct care staff", i.e., those employees who have direct involvement with patients and/or wards; and (2) that there was "independent"

evidence of adverse working conditions, which was not available to either of the previous boards of arbitration. In support of this argument, the Union referred to the "Stellman Report", a report commissioned by OPSEU and carried out by two professors at the Columbia University School of Public Health. The report was based on the results of a questionnaire administered to OPSEU members at six institutions including one mental retardation centre, one psychiatric hospital and four correctional institutions. The results indicate that direct care staff at these institutions reported higher levels of job-related stress than did clerical-technical, maintenance, service and even professional staff employed in the same institutions.

In addition to the Stellman Report, the Union referred to the Auditor's Report for 1987 which, it was submitted, recognized the need to compensate for poor working conditions in psychiatric hospitals. Whether or not such a need exists in respect of employees in the Institutional Care Category, it should be noted that the Auditor's Report was referring to the need to compensate professional staff, namely, Nurses, Occupational Therapists, Pharmacists and Psychiatrists.

Apart from these two reports, the Union submitted anecdotal evidence of job-related stress and of incidents of abuse by patients and wards. This evidence suggests that the incidence of abuse is increasing.

Finally, the Union submitted that there was an historical wage relationship between P.N.A.'s and Registered Nurses ("R.N.'s") in the Ontario Public Service, which is similar to the relationship between Registered Nursing Assistants ("R.N.A.'s") and R.N.'s in general hospitals throughout Ontario. Historically, there has been a differential of approximately 74% or 75% in start rates for R.N.A.'s and R.N.'s in general hospitals. The Union submitted that there is at least an "implicit" relationship of approximately the same magnitude between P.N.A.'s and R.N.'s in the Ontario Public Service. The Union further submitted that this relationship should be extended to Counsellors, who are paid the identical rate to P.N.A.'s, and then to the entire Institutional Care Category, as P.N.A.'s and Counsellors together comprise over 76% of the category.

The Employer's proposal was for a wage increase in the range of settlements which has been agreed to between the parties for all but one of the occupational categories in the Ontario Public Service. These settlements, which were reached in six of the eight categories (the seventh category was referred to arbitration) range from approximately 4.557% to 4.9%. The Employer proposed that there be no special adjustments made for any occupational group.

In support of its position, the Employer relied on the following factors:

- (a) the economic climate as reflected by settlements in the private sector and freely-negotiated settlements in the public sector;
- (b) internal relationships;
- (c) the ability of the Employer to recruit and retain qualified employees; and
- (d) the comparability of rates of pay for similar work in the private sector.

The first of these factors was also relied on by the Union although somewhat different arguments were made. The Employer argued that private sector settlements take into account factors such as inflation and productivity. Moreover, as the private sector is constrained by market forces, these settlements are the most accurate reflection of the economic climate for the purpose of public sector wage determination. Public sector wage settlements are also relevant, it was claimed, as they are freely negotiated and reflect the realities of public sector bargaining.

The Employer maintained that, in the last five years,

- (1) public sector settlements have exceeded private sector

settlements; and (2) settlements in the Institutional Care Category have exceeded both public and private sector settlements. The effect, it was claimed, has been to insulate employees in the public sector, in general, and in the Institutional Care Category, in particular, from the realities of the Ontario economy. However, there was some suggestion that the trend may be reversing, at least in the short term, as private sector settlements for the second quarter of 1988 were well in excess of public sector settlements at 6.0% and 4.7%, respectively. The Employer claimed, however, that the private sector settlements were distorted by the effect of both the INCO and construction sector settlements, which averaged 6.2% and 6.1% to 6.2%, respectively.

With respect to internal relationships, the Employer submitted that the Institutional Care Category has fared reasonably well over the last five years in relation to the other categories. For the period from 1983 to 1987, the Institutional Care Category has had the second highest cumulative increase (34.32%) among the eight wage categories in the Ontario Public Service. For 1988, the parties have agreed to increases for six of the eight categories within the range of 4.557% to 4.9%, excluding special adjustments. According to the Employer, wage rates for the Institutional Care Category should be within this range as well and should exclude any special adjustments.

With respect to the fourth factor, the Employer claimed that the most useful comparison in the private sector is to R.N.A., which is a comparable classification to both P.N.A. and Counsellor. In this regard, P.N.A.'s and Counsellors are paid considerably higher rates of pay than R.N.A.'s. The Employer did not maintain that the rates ought to be the same but only that the comparison is useful in assessing the wage rates to be awarded to P.N.A.'s and Counsellors.

With respect to the third factor, the Employer submitted that the ability to retain and attract employees is a real indication of the competitiveness of wage rates in the Institutional Care Category. In this regard, the evidence indicates that in the one-year period from April, 1987 to March, 1988, 169 competitions were held for positions in the Institutional Care Category. A total of 2,791 applications was received for these positions. Moreover, in 1987, only 379 out of some 5,218 employees left the Institutional Care Category. Of these, only ten indicated that they were leaving for a better-paid position.

Having considered the submissions of the parties, the Board is of the view that a 5.0% increase ought to be awarded to all employees in the Institutional Care Category. In making this determination, the Board has given particular consideration to

the pattern of settlements in the other occupational categories. These settlements, which range from 4.55% to 4.9%, are particularly important as they were freely negotiated and, therefore, presumably take into account the economic realities for the purpose of wage bargaining in the Ontario Public Service and also reflect the internal relativities within the Public Service.

In deciding where to place these employees within the range of settlements, the Board has also taken into consideration certain factors which are particular to the Institutional Care Category. Included among these factors are the disagreeable working conditions under which many of these jobs are performed. Obviously, there are jobs outside the Institutional Care Category with adverse working conditions. But, in our view, the degree of adversity and the fact that there was some evidence of a deterioration in working conditions in recent years justifies an award at the higher end of the range.

The Board has also taken into account, among other matters, the wage rates paid to Nurses in the Ontario Public Service. In this regard, the Union claimed that there was an historical wage relationship between P.N.A.'s and R.N.'s which, by extrapolation, should also be applied to Counsellors, who are paid at the same rate as P.N.A.'s, and then to the entire

category (as Counsellors and P.N.A.'s constitute 76% of the category). Leaving aside the possible application beyond the P.N.A.'s, in our view, no historical relationship has been established as there is no indication that the parties consciously bargained on the basis of a relationship between P.N.A.'s and R.N.'s: see Re The Crown in right of Ontario and The Ontario Public Service Employees Union; Maintenance Services Wage Bargaining Category, October 10, 1985 (Kennedy (unreported)). Nor was such a relationship ever relied upon before either of the previous boards of arbitration dealing with the Institutional Care Category (as might have been expected had such a relationship existed). While there is no historical relationship, there is a working relationship. This is not to say, however, that P.N.A.'s and R.N.'s do the same or even comparable work but only that they work together in the same environment.

For all of the above reasons, the Board is of the view that placement of the Institutional Care Category at the top of the range of settlements in the Ontario Public Service is justified. In the result, the Board awards an increase of 5.0% across-the-board for all classifications effective January 1, 1988. This increase shall apply to hours paid, including overtime hours, for all employees who were in the Institutional Care Category at any time during the calendar year 1988.

(including those who have left or entered the Category since January 1, 1988).

(2) SPECIAL ADJUSTMENTS

(a) Ambulance Officers

Apart from the general wage increase, the Union is seeking parity with Ambulance Officers employed by the Municipality of Metropolitan Toronto. According to the Union, these Officers perform the same work and, therefore, ought to be paid the same rate of pay. According to the Employer, however, Ambulance Officers perform their functions across the Province and, therefore, their rates should be competitive with rates paid by employers throughout the Province and should not be compared with a single employer, i.e., Metropolitan Toronto. The Employer further submitted that the rates paid to Ambulance Officers within the Institutional Care Category are highly competitive with the average rate payable throughout the Province. The Union submitted, in reply, that the relevant comparison is with Metropolitan Toronto as Ambulance Officers are often required to enter Metropolitan Toronto in the course of their duties and as Metropolitan Toronto is the only other significant employer of Ambulance Officers in the entire Province. (In fact, Metropolitan Toronto employs approximately twice as many

Ambulance Officers as does the Ontario Government. Nevertheless, these are the only two large employers of Ambulance Officers in the Province.)

The argument for parity with Metropolitan Toronto was rejected by the last board of arbitration to deal with the issue: see Re Ontario Public Service Employees Union and The Crown in right of Ontario; Institutional Care Category, November 22, 1985 (Devlin (unreported)). The Board's reasoning is set out at pp. 10 - 11 as follows:

"Having considered the submissions of the parties, we do not find it appropriate to make an additional award in respect of Ambulance Officers. Although the Union seeks parity with Ambulance Officers in the employ of the Municipality of Metropolitan Toronto, the reality is that the Union's members employed in this classification work throughout the Province of Ontario. In this respect, we agree with the Employer that the Ontario Public Service must be competitive with rates payable throughout the Province. The data presented reveal that this is the case and, accordingly, we make no additional award for the classifications of Ambulance Officers."

As the matter has been dealt with so recently, the Board makes no award on the Union's proposal.

(b) MRC Trainees
Child Care Assistants
Classroom Assistants
School Aides

The Board makes no award on this matter.

(3) INTEREST AND IMPLEMENTATION

In view of the delays inherent in achieving a wage agreement, the Union is requesting interest on the retroactivity owing from the expiry date of the previous wage agreement, i.e., January 1, 1988. Should this not be awarded, the Union is requesting interest for failure to implement the award within a specified time frame, namely 30 days.

In our view, the matter ought to be dealt with as the parties dealt with it themselves in the last wage agreement. Accordingly, the Board directs the Employer to make every reasonable effort to implement the wage increase awarded herein within 50 days but, in any event, no later than 60 days, from the date of receiving this award.

In summary, the Board awards an increase of 5.0% across-the-board for all classifications. There will be no

special adjustments. The Board will remain seized in the event that difficulties arise in the implementation of this award.

DATED AT TORONTO, this 28th day of December, 1988.



Chairman

"George J. Milley" - addendum to follow
Employer Nominee

"I dissent" - dissent to follow
Union Nominee

IN THE MATTER OF AN ARBITRATION

BETWEEN: ONTARIO PUBLIC SERVICE EMPLOYEES UNION
AND THE CROWN IN RIGHT OF ONTARIO
INSTITUTIONAL CARE CATEGORY

ADDENDUM

There are two or three features of the award which, in my view, merit comment.

First, it is of some significance that the Board reaffirms the principle that the increase should be within the range of the freely-negotiated settlements in the other occupational categories. Not only would this pattern of settlements take into account the economic realities of wage bargaining in the Ontario Public Service but it would also reflect settlements in the Private Sector where both Unions and Employers are directly exposed to the forces of a market economy. Of further significance is the fact that in the past the parties, during a number of contract renewals, found it necessary to resort to binding arbitration. In the preceding round of negotiations and again in 1988 they were able to successfully complete most renewals across the table. This is all to the good. It is important, therefore, that the board strengthen the notion that the pattern of settlements already established ought not to be ignored but rather should serve as the guiding principle in direct negotiations.

Inasmuch as the Employer did not submit any evidence on where the increase should fall within the established range, its placement became somewhat discretionary. However, there are two factors in the award which, while not perhaps relied on; are nonetheless alluded to. These factors are: alleged deterioration in working conditions and the existing working relationship between P.N.A's and R.N.'s. This member disputes that either of these factors are relevant for purposes of wage determination in the present context.

With respect to the former, there was no evidence to show a comparison of the working conditions before and after the alleged deterioration nor was there any evaluation of the job content upon which the salaries of the classifications are based. This would be a minimum requirement to determine whether deterioration had occurred. Further, in this member's view and with respect, it is not within the jurisdiction of the board to make a determination on working conditions. The procedures to be followed when changes in working conditions occur are set forth in Article 5.8 of the Collective Agreement. There is no evidence that these procedures had been invoked by either or both of the parties and it would appear, therefore, that this board cannot seize jurisdiction to deal with a claim of deterioration.

The second factor, that the P.N.A.'s and R.N.'s work together seems to me to be of little value as a criterion for a wage increase. There is an acknowledged working relationship between Doctors and R.N.'s, between R.N.'s and P.N.A.'s and between various other classifications in the institution. However, unless it can be shown by a process of Job Evaluation or by accepted tradition that the positions are comparable and to what degree, it is of little help in formulating a wage award.

Respectfully submitted,

January 5, 1989


George J. Milley

IN THE MATTER OF AN ARBITRATION

BETWEEN THE CROWN IN RIGHT OF ONTARIO

AND

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

IN THE MATTER OF INSTITUTIONAL CARE CATEGORY

D I S S E N T

I have reviewed the Award of the Chairman in this matter and I am unable to concur either with the general wage increase awarded of 5%, or with the failure to award any special adjustment for the Ambulance Officers.

General Wage Increase

The Chairman has relied heavily in making her Award on the pattern of settlements in the other occupational categories, which range from 4.557% to 4.9%. As a general statement, no one could disagree that these other settlements are of some importance in fashioning an Award here. However, those quoted percentage figures tell only part of the story, because they were the increases for the categories as a whole exclusive of any special adjustments. The special adjustments in some cases were significant and obviously increased the total wage package

required for the category involved. In other words, these special adjustments must be seen as part of the overall bargain that was struck in each case.

This is particularly important when we consider the voluntary settlement for the Scientific and Professional Category (April 8/88). The general wage increase was 4.59%. However, the Nurses, who form approximately 40% of the entire category, received an increase well in excess of 6% on average and 7.84% at the maximum of the grid. The format of the settlement was rather unusual in that an additional step worth approximately 3.1% was established at maximum effective April 1/88, and the start rate was deleted so that everyone at the start rate moved up to the next step. This special adjustment benefited approximately 65% of the Nurses.

The important point is that the Nurses' settlement was a voluntary settlement between these Parties as well, and should have been given much more prominence in arriving at a suitable result for this Category.

The fact is that there is no other group in the Ontario Public Service more relevant to the Institutional Care Category than the Nurses beside whom these employees work on a day to day basis.

The Award does state that the wage settlement paid to Nurses has been "taken into account". However, the actual monetary recognition given appears to be minuscule. The Chairman states that there does not appear to be a historical relationship established between the RN and PNA. It may very well be that no precise mathematical formula has existed between these two classifications. But there has been a general range of differences with the maximum rate of the PNA falling generally between 73% and 75% of the RN maximum.

In 1985, as a result of the Devlin Award, the Institutional Care Category received an increase of 4% across the board, which dropped the above percentage differential down to 71.3%, the lowest that it had been in over 10 years. That particular Award was seen by the Union as being totally inadequate for these employees. However, for 1986 and 1987, a two year settlement was voluntarily negotiated so that the PNA/RN differential was narrowed to 74.1%.

The result of this Award, however, is to once again, for calendar year 1988, create a wider differential between the PNA and the RN, this time at 72.2% (the lowest again in the past 10 years except for 1985).

Just as the Parties recognized that a more substantial increase was totally justified for Nurses, so too was a similar increase warranted for the Institutional Care Workers who provide front-line care in Ontario Government Institutions. It would appear that the Chairman has given too little emphasis to the Nurses' settlement because Nurses represent 40% of their particular category and therefore their increase can be passed off as a special adjustment, whereas here we are dealing with a complete category.

In my view this distinction simply does not warrant different treatment. Clearly we are not talking about some tiny group of employees with little impact on the Category, but about a population of about 1750 Nurses covering 40% of the Scientific and Professional Category. In fact, the average percentage increase agreed upon for that category as a whole inclusive of the Nurses was 5.223%. When this is recognized, it becomes clear that the Chairman has not in fact placed this category at the top of the range of settlements. It should also be borne in mind that the Institutional Care Category is one of the lower paid Categories on average in the Public Service (with the average rate being about 70% of that in the Scientific and Professional Category).

Finally, the Award does provide some recognition of the disagreeable working conditions under which many of these jobs are being performed, and the fact that there is evidence of deterioration in recent years. The Award states that this justifies a higher wage increase. This is an important principle with which I wholeheartedly agree, however, once again, when we look at the actual percentage increase,^{the} financial recognition given is minimal.

For all of these reasons, I would have awarded an increase similar to the effect of the Nurses' settlement.

Ambulance Officers

The Union also sought a special adjustment for Ambulance Officers to bring them closer to the wages paid to Ambulance Officers employed by the Municipality of Metropolitan Toronto. This Award denies any special adjustment, and leaves these Ambulance Officers about \$2.00/hr behind their Metro counterparts for calendar year 1988.

In my view, the Metro comparison was a compelling one that deserved strong recognition. The Metro Service is by far the largest ambulance service in the Province covering almost 600 employees, even twice the size of the group under consideration

here. All of the other Units across the Province are much smaller, none having more than 100 employees and some having as few as few as 6.

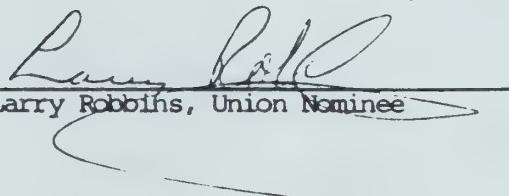
In general terms, the private ambulance services throughout the Province are an unreliable guide for setting wage rates here. In actual fact, the Government is the funder, and the ambulance owners are given virtually no independence. It is fair to say that these services are inadequately funded, so that the rates of pay of Ambulance Officers in private services have tended to lag behind the rates of pay of those employed directly by the Ontario Government (Although in some cases they have in fact caught up to the Ontario Government rates).

Moreover, the industrial relations climate throughout this private ambulance sector has been relatively turbulent, and subject to some severe work-stoppages, notably the recent strike in Halton-Mississauga.

For all of these reasons, it hardly makes sense for the rates payable by small strictly controlled private ambulance services to be used as the basis of setting wages rates payable for these employees. It is a clear case of the tail wagging the dog!

Regrettably, the Chairman has refused to deal with the issue simply because the Devlin Board in 1985 also made no adjustment. With the greatest respect, the Devlin Award could not be seen as carving the rates of pay of these people in stone for all time. It simply decided that no adjustment was appropriate in 1985. We are now dealing with a situation some three years later. Moreover, the Union's request was not for immediate parity with Metro, but for a closing of the gap. In my view this issue should have been addressed directly. Instead, the Arbitrator has simply hidden behind a previous Award. In fact, if an Award three years old is considered so recent, than how long do these people have to wait to have the issue properly considered? The result will be to continue the strong frustration of this group of workers at what is an unjustifiable lag in their rate of pay.

Dated at Toronto, Ontario on the 4th day of January, 1989.


Larry Robbins, Union Nominee

